

REPORT, HEARING TRANSCRIPT

AND

RELATED MEMORANDA

OF THE

JOINT SELECT COMMITTEE

ON

INDIAN LAND CLAIMS

***One Hundred and Ninth
Legislature***

CONTENTS

House Paper 2055, Joint Order regarding the publication of certain documents relating to Senate Paper No. 827, Legislative Document No. 2037, "An Act to Provide for Implementation of the Settlement of Claims by Indians in the State of Maine and to Create the Passamaquoddy Indian Territory and Penobscot Indian Territory".

Letter regarding the transmittal of documents from the Joint Select Committee on Indian Land Claims to the Director of Legislative Research.

Report of the Joint Select Committee on Indian Land Claims relating to ID 2037; with appendix: memorandum (April 2, 1980) from Attorney General Richard S. Cohen.

Transcript of the public hearing on ID 2037, which was held by the Joint Select Committee on Indian Land Claims on March 28, 1980; with index and appendices: memorandum (March 28, 1980) from Attorney General Richard S. Cohen and statement (March 23, 1980) by the Honorable James B. Longley.

State of Maine

In the Year of Our Lord One Thousand Nine Hundred and Eighty

Whereas, this Legislature has before it Senate Paper No. 827, Legislative Document No. 2037, "AN ACT to Provide for Implementation of the Settlement of Claims by Indians in the State of Maine and to Create the Passamaquoddy Indian Territory and Penobscot Indian Territory," and is presently considering its passage; and

Whereas, this bill is the foundation for the future relationship of the State and its citizens and Maine's Indians; and

Whereas, this bill is of unusual significance and importance because of the basic principles it establishes and its future ratification by the United States Congress; and

Whereas, the significance of this bill warrants preservation of certain documents in an accessible manner to aid in explaining the Legislature's understanding and intent in considering this legislation; now, therefore, be it

Ordered, the Senate concurring, that the following documents relating to Senate Paper No. 827, Legislative Document No. 2037, "AN ACT to Provide for Implementation of the Settlement of Claims by Indians in the State of Maine and to Create the Passamaquoddy Indian Territory and Penobscot Indian Territory" be placed in the Legislative files:

1. The report of the Joint Select Committee on Indian Land Claims; and
2. The transcript of the hearing of the Joint Select Committee on Indian Land Claims, including the statement of the Honorable James B. Longley and the memorandum to the committee from Maine Attorney General Richard S. Cohen, dated March 28, 1980; and be it further

Ordered, that each of the documents specified in this Order be prepared and printed in the Legislative Record under the direction of the Director of Legislative Research.

H. P. 2055

Sponsor: Bonnie Post
Town: Owls Head

Cosponsor: Samuel W. Collins, Jr.
County: Knox

House of Representatives

Read and Passed

April 3, 1980

Sent up for concurrence

EDWIN H. PERT,

Clerk

In Senate Chamber

April 3, 1980

Read and Passed

In Concurrence

MAY M. ROSS,

Secretary



STATE OF MAINE
OFFICE OF LEGISLATIVE ASSISTANTS
STATE HOUSE
AUGUSTA, MAINE 04333

May 2, 1980

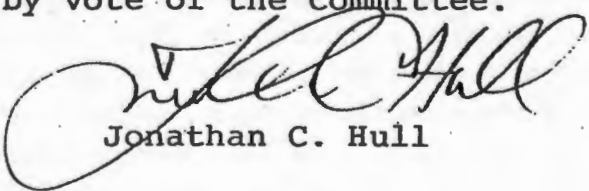
To: David Silsby, Director of Legislative Research

From: Jonathan C. Hull, Counsel to the Joint Select Committee
on Indian Land Claims

Re: Records of the Committee

On behalf of the Joint Select Committee on Indian Land Claims, and as authorized by HP 2055, the following original documents are forwarded to you for inclusion in the Legislative Record:

1. the Report of the Committee, including a memorandum to the Committee from Attorney General Richard S. Cohen, dated April 2, 1980; and
2. the transcript of the hearing on LD 2037, including a memorandum to the Committee from Attorney General Richard S. Cohen, dated March 28, 1980, and the statement of the Honorable James B. Longley, which were included in the Record by vote of the Committee.



Jonathan C. Hull

JCH/lk
Enc.

STATE OF MAINE

MAINE LEGISLATURE

Joint Select Committee
on the
INDIAN LAND CLAIMS

REPORT OF THE JOINT
SELECT COMMITTEE ON
INDIAN LAND CLAIMS
RELATING TO

LD 2037 "AN ACT to Provide for Implementation
of the Settlement of Claims by Indians in the
State of Maine and to Create the Passamaquoddy
Indian Territory and Penobscot Indian Territory."

COMMITTEE

Sen. Samuel W. Collins, Jr.
Senate Chairman
Rep. Bonnie Post
House Chairman

Rep. Paul E. Violette
Rep. Michael D. Pearson
Rep. Elizabeth E. Mitchell
Rep. Barry J. Hobbins
Rep. Charles G. Dow
Sen. Gerard P. Conley

Sen. Andrew J. Redmond
Rep. Donald Strout
Rep. Darryl N. Brown
Rep. Robert J. Gillis, Jr.
Rep. Charlotte Zahn Sewall

REPORT
of
JOINT SELECT COMMITTEE
on
INDIAN LAND CLAIMS

The Joint Select Committee on Indian Land Claims would like to present for the record its findings and intentions in voting on L.D. 2037, "AN ACT to Provide For Implementation of the Settlement of Claims by Indians in the State of Maine and to Create the Passamaquoddy Indian Territory and Penobscot Indian Territory." During the course of its deliberation on this bill, the Committee received a great deal of information from the office of the Attorney General and representatives of the Passamaquoddy Tribe and Penobscot Nation, including their counsel. The information and interpretation developed during the committee deliberations are an integral part of the committee's understanding of the bill and were included in the committee's discussion and decision.

It is the understanding of the Committee that L.D. 2037 is a basic document establishing the principles of the relationship between the State and Indians residing in the State. It is more of an organic document than a specific bill, and thus it seeks to establish the broad and basic provisions of this relationship, rather than the intricate details. Because of this nature of the bill, it was not drafted to refer to specific provisions of state law, but to refer to the basic principles of state law that have remained constant. Thus, it is important that the Committee state that it was considering this bill in the context of present state law, and in some instances, understood that certain specific statutory determinations found elsewhere in State law applied to its intent in the bill. The Committee did not amend the bill to reflect the specific statutory understanding because that would interfere with the bill's purpose of establishing basic principles.

It is the understanding and intent of the Committee that this bill establishes the basic principle of full state jurisdiction over Indian lands within the State, including Indian Territory or Reservations. The bill provides specific exceptions to this principle in recognition of traditional Indian practices and the federal relationship to Indians. The Committee understands that these exceptions are being granted to resolve the long-standing disputes between the State and Indians, and intends that this resolution will provide the basis for harmoniously developing the relationships between Maine's residents. Except for the specific provisions of this bill, Maine's Indians are to be full citizens of the State with all the rights and duties incumbent on that relationship.

It is the understanding and intent of the Committee that the answers to specific questions posed by legislators contained in the memorandum to the Committee from Attorney General Richard S. Cohen, dated April 2, 1980 applies to this bill and accurately interprets its provisions.

It is further the understanding and intent of the Committee that the following specific interpretations apply to the bill:

1. The definitions currently used in Title 12, section 7001 relating to inland fisheries and wildlife apply to the use of those terms in this bill, unless the context clearly indicates otherwise.

2. The authority of the Passamaquoddy Tribe, Penobscot Nation and Tribal-State Commission under this bill are limited to regulating the taking and possession of fish and wildlife. That authority does not include any authority over stocking, propagation and selling or disposition, which remain subject to general state law.

3. The provision on transportation of fish and wildlife permits transportation within the State but outside of Indian Territory if the fish or wildlife was legally taken in Indian Territory. This provision does not exempt that transportation from other legitimate state police power regulation, including requirements relating to public health, sanitation, registration, sale or disposition.

4. The provisions relating to Indian sustenance hunting and fishing apply only to hunting or fishing for personal or family consumption. They do not apply to hunting or fishing to maintain a livelihood or other commercial purpose.

5. The jurisdictional provisions relating to fish and wildlife use the term "sides of a river or stream" which means the mainland shore and not the shoreline of an island.

6. This bill continues without restriction the power of the State to determine the assistance it will offer for roads or highways.

7. The exemption from State taxation for the income from the settlement fund is an exemption from state income taxes.

8. The provision for payment by the Tribe or Nation of a fee in lieu of taxes on real property will apply only to the real property in the Territory that is actually located within the jurisdiction of the taxing authority. Thus, payments to a county in lieu of county taxes would be based on the valuation of the portion of Indian Territory that is within that county's boundaries.

9. The tax exemption granted by this bill to Indian property is not a new exemption under the Maine Constitution, Art. IV, Pt. 3, §23. Because of the "municipal status" granted to Indian Territory by this bill, the existing exempt status of "government purpose" municipal property applies.

10. The scope of the tax exemption for "governmental pur-

poses" granted to the Indians under this bill is to be governed by the limitations established by the general statutes, rules and case law governing those exemptions in all other municipalities in the State.

11. The definition of "business capacity" under the taxation provision of this bill means that capacity and resulting acts which any resident of this state could take in a private or corporate form without being a governmental agent or agency.

12. The requirement for municipal approval under section 6205, sub-§5, before property within the municipality may be added to Indian Territory or Reservation applies to property acquired in any manner, including property received in return for property taken by eminent domain or property purchased with the proceeds of a taking under eminent domain.

13. The selection process and requirements for selecting a tribal school committee are internal tribal matters governed solely by tribal law. The standards for operating the school and school committee, including teacher certification, curriculum, hours, records and other operational requirements are governed by State law.

14. The boundaries of the Reservations are limited to those areas described in the bill, but include any riparian or littoral rights expressly reserved by the original treaties with Massachusetts or by operation of State law. Any lands acquired by purchase or trade may include riparian or littoral rights to the extent they are conveyed by the selling party or included by general principles of law. However, the Common Law of the State, including the Colonial Ordinances, shall apply to this ownership. The jurisdictional rights granted by this bill are coextensive and coterminus with land ownership.

Finally, it is the understanding of the Committee that Congress may provide that certain provisions of this bill may not be amended without the consent of the Indian Tribe, Nation or Band that will be affected by the amendment. However, it is also the understanding and intent of the Committee that the state retains exclusive and unlimited discretion and authority to amend or repeal any statute relating to Indians that is not contained in this bill and to enact, amend or repeal general law even though it may have an effect on the powers or duties of the Tribe, Nation or Band as provided by this bill.

This Committee believes that subject to this interpretation, this bill will provide a firm basis for a strong and sound relationship between Maine's Indians and other citizens. It is a major accomplishment of all parties that this difficult, complex and possible divisive controversy can be resolved in such a reasonable and satisfactory manner.

Signed.

Senate:

Samuel W. Collins, Jr.
Senator Samuel Collins, Jr.
Chairman

House:

Bonnie Post
Representative Bonnie Post
Chairman

RICHARD S. COHEN
ATTORNEY GENERAL



STEPHEN L. DIAMOND
JOHN S. GLEASON
JOHN M. R. PATERSON
ROBERT J. STOLT
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

April 2, 1980

To: Joint Select Committee on Indian Land Claims
From: Richard S. Cohen, Attorney General
Re: Proposed Indian Land Claims Settlement

In response to questions posed to me by Senator Collins and Representative Post by their letter of March 26, I am pleased to provide the following responses. This memorandum supercedes my memorandum of March 28, 1980 and provides a more detailed response to several of the questions.

1. What are the major consequences of failing to enact this bill?

As I have said in my earlier statements, failure to enact the Maine Implementing Act could have serious consequences for the State and its citizens. In my opinion, if the matter is not settled, the claim will go to trial. The cost of a trial to the State alone, not including private defendants, would probably exceed \$1 million. It would take roughly 5 to 6 years to get a final decision from the United States Supreme Court. During that time titles and mortgages in the claim area would be in turmoil, and municipal bonds would not be marketable. If it goes to trial there is a serious risk of the State and private landowners losing a substantial tract of land and being ordered to pay money damages.

In addition, if the matter goes to trial and if land is awarded to either Indian Tribe, the State will in all probability be unable to enforce any of its laws on those lands.

2. What special provisions exist for Indians attending the University of Maine, such as tuition arrangements, and will they continue after settlement of the claim?

As we understand it, under the current policy of the University of Maine, Indians pay no tuition or fees. This

exemption is not required by law, however, and can be continued or terminated at the option of the trustees.

3. What is the status of Indian Territory after settlement, either organized or unorganized, and what are the tax consequences? Will it result in any tax exemptions? What will be the effect on the Forest District, the Spruce Budworm District, and the Tree Growth Tax Law?

The Indian Territories will be unique legal entities. Although they will not be called municipalities they will, with a few exceptions, be the functional equivalents of municipalities. In effect the Territories will be organized areas of the State and will no longer be considered unorganized territory of the State.

The Unorganized Territory Educational and Service Tax, Title 36 M.R.S.A., Sections 1601-1605, will not apply to the Indian Territory. Since the Indian Territories will be functional equivalent of organized areas, these taxes will not apply to the Territory. The purpose of the referenced tax is to provide sufficient monies to the Unorganized Territory Educational and Service Fund. The Fund is annually established by the Legislature at an amount sufficient to pay for the various municipal services provided to the unorganized territory by State agencies or counties. After the Fund level is established the tax is levied on the unorganized territory at a rate sufficient to generate revenues equal to the legislatively established level. Thus the rate of the tax and tax revenues are directly related to services rendered by the State. Since the effect of L.D. 2037 will be to remove certain areas of the State from the unorganized territory it will automatically reduce State costs to the territory. Thus, removal of the Indian Territory from unorganized territory will result in no loss of revenue to the State.

With respect to other taxes, the Tribes will pay all State, county and district taxes of any kind applicable to any municipality. These taxes will be called a fee but paid in the same amount as the usual tax. Income to the Tribes from the Federal Tribal Trust Fund will be exempt from State income taxes. Any land owned by a tribe in a town can be taxed by the town and taken for non-payment of taxes.

Any land acquired by the Tribes in an area currently designated as within the Spruce Budworm District will remain within that District and will pay a fee equal to the tax. With respect to the Maine Forestry District, the Indian Territory will remain within the District. The definition of the District is a geographical description encompassing organized and unorganized areas. In my judgment the incorporation or creation of Indian Territory in an area currently designated as within the Maine Forestry District does not change the boundaries of the District.

Finally, the Tree Growth Tax Law will apply to the Indian Territory. We anticipate that the practical impact of the application of this law to the Indian Territory will be negligible. Current law requires that all forest parcels over 500 acres in size be taxed under Tree Growth rates. Since we anticipate that the lands to be acquired by the Tribes in the Indian Territory are already classified as Tree Growth lands, the tax status of such parcels will not be altered. Thus, the Tribal payments in lieu of taxes will, as a practical matter, be unchanged from the taxes previously levied on these lands. Similarly state funds to be provided to the Tribes will be computed in the same manner as it would to any other municipality in which the bulk of the lands were designated as Tree Growth Tax Lands.

4. How was the price of land to be purchased under the settlement negotiated, and who was involved?

Negotiations were conducted directly between landowners and the Tribes. Since all parties agreed that any purchase of land would be funded by Congress, we did not believe it appropriate to participate in those negotiations. In addition, I believe that former Governor Longley was of the view that the State should not participate in land acquisition negotiations. I agreed with Governor Longley's position and have acted consistent with it. Only Congress has authority to decide how much money should be appropriated for this purpose. I am confident that Congress will carefully scrutinize the requested appropriation.

5. What will the State's obligation for welfare, education, and other services be after the settlement? Will the Federal Government assume any of these obligations?

The Department of Human Services is required to reimburse any municipality 90% of the general assistance costs that exceed .0003 of that municipality's state valuation. This same system will apply to the Tribes in their respective Territories. We believe the current general welfare statutes provide sufficient safeguards to prevent the tribes from abusing that system. If, however, abuses do occur, the Legislature is free to amend the general welfare laws to correct them. In this regard, however, it should be noted that of the budget of the Maine Department of Indian Affairs for F.Y. 1979-80, an estimated \$450,000 can be classed as general welfare assistance. It is apparent therefore that the State has traditionally spent substantial sums for these programs on the reservations. Under the Implementing Act these direct appropriations will cease and the Tribes will work within the present system as any other municipality does.

For purposes of determining eligibility for State financial assistance, including for example AFDC, any Trust Fund income distributed to individual members of the Tribes will be treated as ordinary income and computed in determining such eligibility.

The State of Maine currently funds nearly the entire cost of education on the existing Reservations. This cost for fiscal year 79-80 was approximately \$770,000. After the settlement, the Federal government will contribute heavily to the cost of education on Penobscot Territory and Passamaquoddy Territory. For fiscal year 80-81 the Federal government is expected to contribute approximately \$1,126,000 to the cost of education on the two territories. We anticipate therefore that the State will have little if any financial obligation for education.

Another State expense for municipalities is in the area of road maintenance. Again, however, we expect that under the proposed Implementing Act, the State will realize a net savings. Under present law all roads on the Passamaquoddy and Penobscot Reservations are designated as state highways, no matter how small, and as a result the State pays all costs of maintenance. Under the Implementing Act, this provision will be repealed and the State will have the option of designated state highways and state-aid roads within Indian Territory as it does in any other municipality. While we do not have cost estimates, it seems reasonable to assume that such a scheme will result in a cost savings to the State.

6. Will jurisdiction and ownership of any "Great Ponds" be affected by the settlement?

Ownership of and access to Great Ponds will be completely unaffected. The waters and subsurface lands will remain under State ownership. The general common law right of access to Great Ponds will apply to any of these ponds.

Fishing jurisdiction on Great Ponds, 50% or more which shoreline is within Indian Territory, will be vested in the Tribal-State Commission with authority in the Commission to adopt regulations on season, bag limits, size limits and methods. This regulatory authority is subject to the residual power of the Commissioner of Inland Fisheries and Wildlife to supercede Tribal-State Commission regulations if he determines that the regulations are harming or there is a reasonable likelihood that they will harm fishing stocks in other water.

7. May Congress alter the amount of money in the settlement, and what is the consequence if it is altered? What is the consequences if Congress appropriates no money after the Legislature has enacted the claims bill?

Congress' power in Indian law is absolute and as a matter of constitutional power Congress can extinguish the claim on any terms that it wishes. Whether an alteration would affect the chances of enactment of the bill is a matter of political judgment and would depend upon the magnitude of the reduction. I would, however, expect that the Tribes would oppose any bill that appropriates less than that to which they agree. Congress could nevertheless provide less money if it wished to do so, though I would not expect Congress to go so far as to extinguish the claim without any compensation.

With respect to the State bill, although it contemplates an appropriation by Congress as a precondition to its taking effect, since Congress' power is absolute, Congress could ratify or otherwise implement the Maine Act without regard to that limitation.

8. What will be the effect of the settlement on "camp lots" leased on lands transferred to the Indians? What policies on future leasing have been agreed to?

We do not know the policy of all the landowners but we understand that some have agreed not to sell lands which are leased for camp lots. We also understand that Dead River and Great Northern will give camp owners the opportunity to purchase their lots and thus except those properties from the Indian Territories. To the extent such lands are sold, the

Tribal Negotiating Committee has represented to us the Tribes' intention to continue the leasing policies previously employed by the timber companies. This representation is not binding, however, and the Tribes could refuse to renew leases after the termination dates just as any other landowner can.

9. What are the estimated expenses of the Tribal-State Commission and who will pay them?

The Governor has suggested that the Commission's initial expenses not exceed \$3,000.00 per year. These costs are proposed to be paid out of the administrative account of the Department of Inland Fisheries and Wildlife. The amount and source of monies can be changed by the Legislature if circumstances require.

10. (A) Will the fish and game provisions of the bill establish two independent licensing authorities in the Territory and Reservation areas?

Yes. The Tribe will have authority to regulate hunting and fishing in small ponds and may require a license. The Tribal-State Commission will have authority in large ponds, rivers and streams and may require a license.

(B) Will Maine residents have to purchase two licenses?

The Tribe and Commission are authorized, but not required, to require licenses on lands or waters under their jurisdiction. These licenses would be separate and distinct from State licenses. However, State licenses are not required to hunt or fish in Indian Territory or waters under Tribal-State Commission control.

(C) Will non-Indians be entirely barred?

Whether non-Indians are barred from the Territory depends on tribal policy. As landowners the Tribes will have the same power to open and close their lands as paper companies do. Since the Tribes may buy land anywhere in the State which will not be included in the Tribal Territory, they will, like any other landowner, be able to use these lands in any legal manner.

(D) How will the licensing and regulatory authority of the Commissioner of Inland Fisheries and Wildlife be affected?

As a general rule, state fish and game laws regarding hunting and fishing will not apply in Indian territory. Taking of game and fish is controlled in the first instance exclusively by the Tribe or Tribal-State Commission. However, the Commissioner can do surveys, can check game registrations and can take remedial

steps, including superceding those regulations, if he finds Tribal or Tribal-State Commission regulations to be harming or that there is a reasonable likelihood that they will harm other fish or wildlife resources.

(E) May the Indians close their lands to hunting and fishing?

Yes.

(F) How does this authority compare to that of private landowners?

Like private landowners, the Tribes can close their lands. Unlike private landowners they can adopt separate hunting and fishing regulations as explained above.

(G) Who and how will Indian hunting and fishing regulations be enforced?

Tribal law enforcement officers will be equivalent to municipal police officers and within the Indian Territory the Tribal police can enforce all laws including Tribal ordinances on hunting and fishing and regulations of the Tribal-State Commission. All other state law enforcement officers, including Fish and Game Wardens, can also enforce Tribal-State Commission regulations and other laws of the State.

Indian violators of Tribal fish and game ordinances will go to Tribal Court. Non-Indian violators will go to State Court. All violators, Indian and non-Indian of Tribal-State Commission regulations go to State Court.

Tribal law enforcement officers will also be subject to the mandatory training requirements applicable to other local police officers.

11. How will the Tribal School Committees be selected, what specific powers will they have and who will pay education expenses?

Tribal school committees are currently provided for by special laws. Those laws will be repealed and the Tribes will be authorized to create their own school committees as any other municipality does. They will be subject to general state education laws, but as a transitional measure, and until those new committees are created, the current school committees will continue in operation.

Educational costs will be a shared Tribal-State expense using the same formulas and methods used in any other municipality. Currently all Indian educational costs are borne by the State, with the appropriation for the current fiscal year amounting to \$770,000. We have been informed that the U.S. Bureau of Indian Affairs anticipates expending more than \$1,100,000 per year on Indian education beginning October 1, 1980. Upon inquiries to the Maine Department of Educational and Cultural Services, we have been advised that this federal payment will more than exceed the anticipated state and local share of education for comparable municipalities.

12. If Indians purchase a business or building with state funds or guarantees and it fails, may the state or other creditor take it to meet the outstanding loans? May lands in the Territories or Reservations be attached by creditors? If not, what remedies are available to enforce payment of debts?

The answer to these questions are not found in the Maine Implementing Act but are contained in the draft of the Federal bill to be proposed to Congress. Lands of the Tribes within the Indian Territories may not be taken or attached to pay creditors, regardless of whether the creditor is the State or other person. However, creditors are entitled to be paid out of Tribal Trust Fund income. Thus a creditor can sue the Tribe for a debt. If the Tribe fails to pay the judgment, the creditor can request the Secretary of Interior to pay the judgment out of the Trust Fund income. If the Secretary refuses to pay, the creditor can sue the Secretary. We would conservatively estimate the annual Trust Fund income at \$1,250,000 for each Tribe which should be ample to pay most debts.

Lands owned by the Tribe outside their Territory are not subject to the same protection and can be foreclosed against, attached or taken for non-payment of taxes or debts. Individual members of the Tribes will not own Tribal land but will occupy parcels assigned to them. Their status is in some respects similar to a person who leases land. The land such individuals occupy cannot be taken or attached by creditors.

13. May Tribal authorities open and close roads through the Territory or Reservation lands, and may they charge for road use?

Private roads owned by the Tribe can be open or closed at will. County or State roads cannot be closed and the Tribe cannot charge fees. County or State roads, whether owned in fee or held under an easement, will not be transferred to the Tribe but will remain under control of the State or County.

14. Are non-Indians residing on Territory or Reservation lands liable for taxes imposed by Tribal authorities? Do they participate in selecting those Tribal authorities or in determining the tax rates?

The real and person property of non-Indians residing on the Territories is subject to taxes imposed by the Tribal Authorities within those territories. Non-Indians residing on the Territories do not have the right to vote in Tribal elections but the Tribes could elect to extend that right to non-members. However, they are entitled to receive any municipal or governmental services provided by the Tribe or Nation or by the State, with minor exceptions, and are entitled to vote in National, State and County elections in the same manner as any tribal member.

15. What is the effect of the settlement on state and Federal authority over coastal or marine waters?

The only coastal land that will be owned by either Tribe is the current Pleasant Point Reservation of the Passamaquoddy Tribe. By virtue of this ownership, the Passamaquoddy Tribe will have authority to enact shellfish conservation ordinances just as other municipalities do in the coastal lands immediately adjacent to Pleasant Point. As in the case of municipalities generally, the enactment of such ordinances will be subject to approval of the Commissioner of Marine Resources. The Tribes will have no other rights in coastal or marine resources other than any other person or entity.

No other coastal lands will be included in the Indian Territory. To the extent the Tribes might buy other coastal land, they have no more rights in the coastal lands or marine resources than any other person.

16. What specific municipal powers and duties are given to the Tribe and Nation under this bill?

The effect of the bill is to make the Indian Territories the functional equivalent of a municipality. The bill confers on the Tribes within their Territories those powers and duties possessed by municipalities under "home rule." Those powers and duties include but are not limited to ordinance powers, taxation powers, home rule powers, the power to sue and be sued and the power to dispense and receive services.

17. What specific "rights incident to ownership of land" in Indian Territory will the Indians gain under this bill?

The quoted provision, which is found in the last sentence of Section 6207(1), means that the Tribes have all the same rights in their property as any other landowner, including the right to prevent hunting, trespassing or snowmobiling, to lease the land, sell stumpage off it, or develop it.

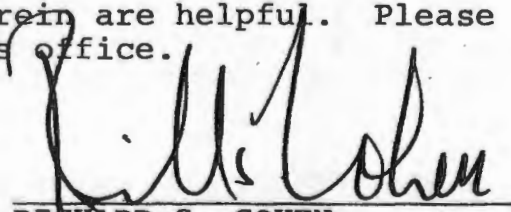
18. What provisions govern the grounds and procedures for civil actions, or custody or domestic relations actions that are within the jurisdiction of the Tribes?

The Tribes are free to establish their own procedures without State regulation but subject to the Federal Indian Civil Rights Act. We assume the Tribes will adopt their own laws regarding minor civil matters and domestic relations as do other Tribes in the county. We understand that the Penobscot Nation now has an operational Tribal Court, employs a lawyer as Tribal judge and that the Court utilizes the Maine Rules of Civil Procedure.

19. What will be the financial obligations of the state after enactment but prior to the effective date of this Act? Will there be an appropriation for transition during FY 1981 or 1982?

The existing State appropriation for Indian programs ends at the end of the current fiscal year. It is unclear whether the State has a legal obligation to fund some or all of the existing Indian programs, until such time as the settlement is implemented and federal funds flow to the Tribes. However, we understand that the Governor is preparing a transitional appropriation for FY 1981 to continue Tribal assistance. Federal funding begins on October 1, 1980, the start of the federal fiscal year.

I hope the answers provided herein are helpful. Please feel free to inquire further of this office.



RICHARD S. COHEN
Attorney General

RSC:mfe

STATE OF MAINE
MAINE LEGISLATURE
Joint Select Committee

MAINE INDIAN CLAIMS SETTLEMENT

Public Hearing Held in the Main Auditorium of the Augusta Civic Center, Augusta, Maine, at 10:00 A.M., on March 28, 1980.

PRESENT

Sen. Samuel W. Collins, Jr.
Senate Chairman
Rep. Bonnie Post
House Chairman

Rep. Paul E. Violette
Rep. Michael D. Pearson
Rep. Elizabeth E. Mitchell
Rep. Barry J. Hobbins
Rep. Charles G. Dow
Sen. Gerard P. Conley

Sen. Redmond
Rep. Donald A. Strout
Rep. Darryl N. Brown
Rep. Robert J. Gillis, Jr.
Rep. Charlotte Zahn Sewall

Joanne M. Peasley
Hearings Reporter
Public Utilities Commission

Public Hearing
10:00 A.M.
Augusta, Maine

SENATOR COLLINS: This hearing will come to order. This is a public hearing of the Joint Select Committee of the Maine Legislature on Indian Land Claims. We are here today to hear a bill that has been presented to the Legislature on behalf of the State by the Senator from Cumberland, Senator Conley and myself so that we may hear the entire story of the role of the State of Maine that is proposed to us from all of the interested parties.

Our procedure during the day will be that we will first hear a presentation from the State of Maine, from the representatives of the Indian Tribes and from representatives of affected landowners. During this period of presentation, there will be no questioning permitted but when all of these presentations are before us there will then be questions from the Committee. We hope to be able to break for lunch at 12:30 for a half hour only and to resume promptly at 1:00. After lunch we will be hearing from the opponents to this measure, from those that wish to qualify themselves as neutrals and then from other proponents. There will be questions as time permits from the Committee to the various witnesses that come before us. If members of the general public have questions which are not answered, you are most welcome to write those questions on a sheet of paper and hand it to our Committee Staff, who are seated over here to my left, and those questions will be handed to the Committee and we will try to organize them so that all questions can be presented before the day is over. I would point out to you that the rules of this building do not permit smoking during our proceedings. There are concession stands out in the wings of the building, so there

will be chances for you to find something to eat out there.

The Legislative Document with which we are dealing today is No. 2037. There are copies of it on the tables near the entrance, along with statements relating to this whole matter. If you do not have them, you are welcome to obtain them. The title of the Bill is, AN ACT to Provide for Implementation of the Settlement of Claims by Indians in the State of Maine and to Create the Passamaquoddy Indian Territory and Penobscot Indian Territory. Our proceedings today are being recorded. We are now ready to hear from the Attorney General of the State of Maine, Richard Cohen. Mr. Cohen.

ATTORNEY GENERAL COHEN: Mr. Chairman, Members of the Committee.

I am pleased to be here this morning to present to you for your consideration the Act to Implement the Maine Indian Land Claims Settlement. Although I have previously spoken to the entire Legislature about the Settlement Proposal and have previously provided an outline of its contents to all Legislators, I think it appropriate to offer some further observations and remarks about the pending proposal before you.

The decision to recommend this Settlement to the people of the State of Maine and to you as their elected representatives was not one I made lightly. Rather, it was made after a very careful analysis of the claim and assessment of the risks involved in proceeding to trial and after extended consultation with experienced trial counsel retained by us. When I took office in 1979, one of my first tasks was to familiarize myself with the Land Claims Case. I conferred at length with my Staff and also retained the services of James St. Clair, one of the most respected trial attorneys in the country, to review the Case for me. My conclusion

and that of my advisors was and is that if the matter went to trial, the State would probably prevail. Nevertheless, my advisors and I recognized that we were dealing in probabilities and there was a serious chance that the State of Maine and some of its Citizens might have some substantial liability. While I cannot state with precision the degree of the risk, given the complexity of the suit and the size of potential liability, I concluded that there was and is a real and serious risk that cannot be ignored. It is important to understand that while the State has a number of good defenses, we are dealing in a very unsettled area of the law. The Supreme Court has never definitively ruled on many of the issues involved in the Maine Land Claims Case. There has never been so far as we know an actual trial in a land claim case as large and as complicated as this one is in the State of Maine. I should also point out that the case cannot be viewed entirely as an either/or proposition. A trial might not necessarily result in a complete win or loss for either side. Certain aspects of the Tribes' claims are stronger than others and certain areas of the State are more vulnerable than others. It is quite possible that neither side would win completely but that the State and some of its citizens might suffer a significant loss if the matter went to trial. During the past twelve months, there have been a number of Court decisions which has also influenced my assessment of the Land Claims Case.

In 1979, the U.S. Circuit Court of Appeals for the First Circuit decided in *Bottomly vs. Passamaquoddy* that on the facts of that Case, the Passamaquoddy Tribe was a sovereign Tribe and immuned from suit. That same year, the Maine Supreme Judicial Court in *State vs. Dana Soccabasin* held that the Passamaquoddy Reservation was Indian Country

and that State Criminal Laws did not apply and could not be enforced within the Reservation. While in 1979 the United States Supreme Court indicated in *Wilson vs. Omaha* that certain provisions of the Indian Trade and Intercourse Act might not apply to the Eastern States, nevertheless, the United States District Court in Connecticut later held in *Mohegan Tribe vs. Connecticut* that the land provisions of that Act, the Trade and Intercourse Act, were applicable to the Eastern Tribes. In each of these cases, the State of Maine participated either as a party or as a friend of the Court. In all of them, we were on the losing side. While none of the decisions has dealt with precisely the same issues involved in the Maine Land Claim, they did deal with related matters. The combined effect of those decisions caused me to reevaluate the desirability of settlement.

Finally in reaching the conclusion to recommend the Settlement to you, I could not be unmindful of the cost to the State if the matter went to trial. A trial on the merits with subsequent appeals to the United States Supreme Court could take roughly five to six years and at a cost to the State alone, not including private defendants, of more than a million dollars in legal and expert witness fees. In my judgment, once a law suit is filed against the landowners in the claim area, those landowners and the State would experience serious economic and social disruption with land titles and turmoil and bond issues being unmarketable. In case any of you have any doubts about the potentially catastrophic consequences of litigation should this Settlement fail, I think you only need to look to the experience of the Town of Mashpee, Massachusetts. In that Town, a land claims suit was filed in 1976 by the so-called Mashpee

Tribe claiming title to all private property in that Town. From the date the suit was filed until recently, titles and mortgages have been frozen in that Town. Title insurance companies would not insure property titles, municipal bonds could not be sold by the Town. Even though the Town eventually won the trial and even though the United States Supreme Court refused to consider an appeal by the Indians, some uncertainty about titles remain because of the threat of another suit. Mr. St. Clair tried that Case for the Town and can confirm these facts to you later on. As incredible as it seems, the Town of Mashpee remained in an economic strangle hold, despite its victory in the litigation.

Those who oppose this Settlement should seriously consider the experience of Mashpee before they vote against this Settlement. Given all of the foregoing factors and considering the risks of the people of this State losing a substantial amount of land, the possibility of the State and its citizens being required to pay millions of dollars in trespass damages, I concluded that I had a duty to look for a reasonable and prudent Settlement. I firmly believe that the proposal I have given you and you have before you today is such a prudent Settlement. With that background and risks in mind, I think I should offer a few comments about the contents of this proposal.

All of you have previously seen the proposal, have received the summary distributed last week and heard my remarks to the entire Legislature. I do not think that it is necessary to restate to you the entire contents of the Bill. Let there be no mistake, however. This proposed Settlement does not create any nation within a nation. I understand that there are many people who honestly disagree with the wisdom of some of the provisions

of the Maine Implementing Act but everyone should understand that by any measure the framework of laws in this Act is by far the most favorable state-Indian jurisdictional relationship that exists anywhere in the United States. As a general rule, States have little authority to enforce state laws on Indian Lands. Tax laws, water and air pollution laws, zoning laws, health laws, contract and business laws and criminal laws--all those state laws are usually unenforceable on state Indian Lands. More than half the states in the United States have Indian Lands within their borders and most of those states are engaged in continual battles with Indian Tribes over the question of whether state laws apply to those lands. In fact, in Maine, the State Supreme Court has recently ruled that Maine cannot enforce its criminal laws on the existing Indian Reservations and as I indicated, lacks jurisdiction over those Reservations. Although we appealed to the United States Supreme Court, again it refused to hear the appeal. In my judgment, it is unlikely that if the matter were litigated, we could enforce other State Laws on the reservations. If the Indians were successful in the Land Claim and recovered some land, not only would we lose the land, but also we would probably be unable to enforce State Laws on those lands. I believe such a result would be intolerable. The proposal before you not only avoids such a situation but recovers for the State much of the jurisdiction over the existing reservations that it has lost in current litigation--in recent litigation. It would be an over statement to say that there would be no difference between the Indians' Lands and non-Indians' Lands under this proposal but I do believe it is fair to say that by and large this proposal is generally consistent with my belief that all people in the

State should be subject to the same laws. While there are some exceptions which recognize historical Indian concerns, in all instances the State's essential interest is protected. I am convinced that the Implementing Act is a remarkable document and represents a fundamental protection of State sovereignty and yet deals fairly with our Indian citizens. I believe that if ratified by the State, this Act may well become a model to which other states may look in the future to reorder State-Indian relationships.

Finally, I think I should offer some comments about the cost of this Settlement. This Settlement involves no direct appropriation of State monies and no State lands. The amount proposed to be appropriated by Congress is an amount which was negotiated between the tribes and land-owners and represent the value that they through their negotiations have placed on 300,000 acres of land. Whether, in fact, the value of 54.5 million is fair, cannot be judged by me. The ground rules under which I have operated with the tribes were, first, if we could negotiate a satisfactory jurisdictional agreement, then I would recommend to Congress that it appropriate sufficient monies for the tribes to purchase 300,000 acres; and, second, that any land acquired by the tribes come from willing sellers at fair market values. Accordingly, the State has not been involved in the negotiations over land values and land locations. I understand this to be consistent with the State's position from the outset of the Land Claims Case being filed long before I took office. It should be clear to this Committee, however, that enactment of the Maine Implementing Act by the Maine Legislature does not constitute its endorsement of a payment of 81.5 million or any other specific amount to the tribes. Enactment of this Bill creates the legal framework applicable to any Indian Lands in Maine.

If this Bill is enacted by the Maine Legislature, it is up to Congress to judge how much money is fair compensation for the tribes. We are all acutely aware of the limits to Federal and State funds and, frankly, I cannot judge how much money Congress will appropriate for the Settlement. Many searching questions will be asked of the tribes and landowners during that process. If you have questions today about the value and the locations of the land, I would respectfully suggest that you can get more complete answers by directing your inquiries to the tribal and landowner representatives who will be testifying today. For your assistance, I have had prepared a map showing the location of land, the acquisition of which is being negotiated between the tribes and the landowners. The map you have received depicts land in unorganized territory of the State, which if acquired by the tribes before January 1, 1983, will be considered to be within the Indian Territory. Only those lands shown are eligible for inclusion in Indian Territories. If other lands are bought, and the Tribes are free to buy any land they wish as is any person, those other lands would have no special legal status and would be treated the same as any other land in the State. It is also important to clearly understand that no one has to sell land to the Tribes. The Tribes will have to buy land from willing sellers. If you don't want to sell, you don't have to. If they buy land, it will have no special legal status unless it is both outside an existing city, town or plantation and is in certain pre-determined areas specified in the Implementing Act and shown on the map.

This Settlement will result in no direct cost to the State. As to indirect cost, we have every reason to believe that the State will

realize a substantial net savings by treating the Indian Territories as municipalities. Currently the State appropriates \$1,718,000 per year for the State Department of Indian Affairs, for Indian Education and for the Maine Indian Housing Authorities. All of these appropriations would cease except for possibly some transitional expenses. In the future, the Indian Territories would be treated as municipalities for funding purposes, using the same formula used for any other towns. The more expensive of the State funding requirements would be Education and Road Maintenance. In both those areas, we anticipate that the tribes will receive substantial Federal Financial Assistance. Under the Implementing Act, money received by the Tribes from the Federal Government for a program funded by the State after deducting any mandatory local share required to be raised by the Tribes would be deducted from the funds to be provided by the State; thus, the State cost in treating the Indian Territories as municipalities would be less than the cost of State funding to an ordinary municipality of comparable size in assessed valuation.

I am confident that the State, therefore, will realize a substantial net financial gain from this Settlement. As I said at the beginning, the decision to initiate negotiations was not one I made easily. I did so, however, after a full assessment of the risks, potential liability and possible interim economic damage to the State. Having worked for 13 months to negotiate the proposal before you, I am convinced it is sound and prudent and very favorable to the State and its citizens. I want it to be clear, however, that it is because I see this proposal as favorable to the State that I recommend its enactment to you. I am not advocating

Settlement on any terms. If this Settlement was less favorable to the people of this State, I would not recommend it to you, but would recommend that we go to trial immediately. No one ever likes a settlement, including me but we ought to be fully aware of the risk we are running if it is not enacted. If this proposal fails, then we should be prepared to go to trial. If this proposal fails, we should be prepared to appropriate at least one million dollars for defense of the claim. If this proposal fails, we should be prepared to live with a possible interim economic and social harm to the State and its citizens. There are no easy or simplistic solutions to this problem. Regardless of how one feels about the merits or fairness of the claim, the plain fact is that it will not go away by ignoring it.

Like many, I do not think that it is fair to permit people to raise 200 year-old claims. But whether it is fair, is not the point. The claim is real, it is here and it must be faced. As Attorney General, I am firmly convinced that the merits of this Settlement far outweigh the enormous risk of a trial and I urge you to support the Bill. Thank you very much.

SENATOR COLLINS: Mr. Cohen, do you now wish to hear from Mr. Flanagan?

ATTORNEY GENERAL COHEN: Yes.

SENATOR COLLINS: We are now pleased to hear from the representative of Governor Brennan, Mr. David Flanagan, Counsel to the Governor.

MR. FLANAGAN: Thank you very much, Senator Collins, Representative Post, Members of the Committee. My name is David Flanagan, I am Legal Counsel to Governor Joseph E. Brennan. I feel privileged to appear before

this Joint Select Committee to convey the Governor's views for your consideration.

As you know, last Friday Governor Brennan, after a thorough review, decided that the public interest of the people of Maine was on balance best served by the enactment of the Legislation now before you. At the outset, let me make a few points about the Governor's position as clearly as I can:

One, if a trial proves necessary, the Governor is convinced that the State will ultimately win.

Two, the Governor supports and has always supported the quickest, fairest solution to the Indian Claims possible.

Three, Governor Brennan would not support any Settlement which involved State dollars or a significant compromise of the State's sovereignty over all its land and people.

Four, the Governor does support the jurisdictional Legislation before you because it meets that test.

Fifth, you should also know that he has never endorsed any one million dollars as a cost for a Federal Settlement, nor has he endorsed any particular number of acres.

In a carefully drafted statement last Friday, he made it clear that the State had no role in the land and money negotiations and no basis for evaluating or supporting the figures the Tribes and the Landowners agreed upon. The decision on that issue is in the hands of Congress and Congress alone. The Governor will, of course, abide by whatever reasonable consensus the Maine Congressional Delegation reaches on those issues.

Sixth, the Governor well understands that this is the largest, most complex legal claim every made concerning this State and that this Committee and the Legislature should take all the time they feel they need both to fully examine this proposal and to take the steps necessary for its enactment.

With that introduction, let me note that Governor Brennan has been directly concerned with this issue almost from the beginning of the litigation in the early 1970's. After directing the defense of the State for several years and working with attorneys, historians, anthropologists and other experts to develop the State's case, Governor Brennan reached the firm conclusion that the legal claims asserted by the Tribes were without merit. The Governor continues to believe that the legal claims of these Tribes could be successfully defended. He also recognizes, of course, that there is a very respectable authority which believes litigation would mean some risks and you've heard the Attorney General articulate that view. That is why the Governor was willing as Attorney General to agree to the so-called Hathaway Settlement back in October of 1978 along with Senator Ed Muskie, Bill Hathway and Congressman Bill Cohen and Dave Emery and, of course, Governor James Longley. Then, as now, the Governor felt that the Public's best interests were not necessarily best served by trying this case out before every possible Court on every possible issue. There are several reasons why he has always been willing to consider a fair and equitable settlement out of Court.

First, as the Attorney General noted, the claim is of enormous size. It affects all of Eastern Maine for a potential of more than 12 million acres. We could also expect the Tribes to make a claim in Court for more

than 25 billion dollars in damages against private landowners, homeowners and the State.

Second, the litigation would be extremely expensive and protracted. With a claim of this magnitude, you may be sure that every party would take every appeal, exhaust every avenue and litigate every issue to the bitter end. This prolonged legal combat would undoubtedly require one and possibly several appeals to the United States Supreme Court. It could well take another decade of litigation. It would certainly take hundreds of thousands, if not millions of dollars, to resolved.

Third, during this uncertain period of litigation, we could reasonably fear that the ability of the State and Municipalities and private corporations to market bonds would be severely jeopardized. Likewise, titles to real estate would be far more difficult to transfer. Also, serious doubt about the ability to finance private economic development activities would be created. With the economic problems facing our Nation and our State at this time, these issues must be of very great concern to responsible Legislators as well as the Governor.

But while these matters are problems of real concern, Governor Brennan has not been willing to support any settlement unless it could satisfy the very explicit test he has publicly and privately stated many times. As I noted earlier, his test has always been this:

First, no State money should be spent to settle any claim.

Second, the sovereignty of the State Government over all the land and all the people of Maine should not be compromised in any substantial way.

He has always been guided by these two principles because he has always believed that the people of Maine were guilty of no wrong doing and,

therefore, should not have to pay for the mistakes other may have long ago made. Likewise, he has always believed that all of the people of Maine, regardless of race, religion, ethnic origin or sex should be treated equally by their government.

We could never have a nation within a nation in Maine. Such a result would not only be unworkable in a State our size, but it would also promote racial and ethnic hostility and resentment to the ultimate detriment of all of our people. Part of the Settlement Proposal involves the State and the people of Maine and requires the approval of the Legislature and the Governor. The Governor is satisfied that this part meets his two tests. It does not involve State money and it does not diminish the sovereignty of the State as we have known it. On the contrary, this Proposal offers the potential for building a whole new relationship with our Indian citizens. A relationship unlike that which exists in any other state. By treating the Indian Territories as municipalities, this Settlement provides that our Indian citizens will be on a substantially equal footing with their fellow citizens in other towns for the first time in our history.

One technical exception to the general law requires a finding of reasonableness before using eminent domain but this is not much different from the law that already governs taken by the Maine Bureau of Parks and Recreations. The changes from present law in regard to Municipal Courts for minor offenses, domestic matters and child welfare affect only cases involving exclusively Tribal Members. To put this in perspective, you might recall that until 1960, Municipal Courts with similar jurisdiction existed in every part of this State and, as most of you know, Indian

Territories have been traditionally exempt in Maine from the application of our fishing and hunting laws and regulations. So that in a practical sense, this Bill imposes more State control on these activities than exists now. With these exceptions, all State Laws will apply in full force and effect. So it is accurate to say that there has been no significant compromise of the State's sovereignty at all. What we have created is certainly not a nation within a nation but rather two new municipalities within the State. The Indians would be full-fledged citizens responsible for their own services, their own taxes, their own welfare and their own destiny, just like do people in every other Maine town and city. Governor Brennan is truly hopeful that this Settlement will start a new era in which Indians will live and govern with the same dignity and self respect as all citizens.

In conclusion, the Governor is supporting this Settlement because it will totally and completely extinguish all Indian claims to Maine land and Maine money. At the same time, it will eliminate the cloud on property title and uncertainty in financing development. It should also substantially reduce the amount of State tax dollars going into Indian services. It will also provide an opportunity for our Indian citizens to live in municipalities and govern themselves as do other Maine citizens without a paternalistic state supervising their affairs and as I noted, it involves no State tax dollars. In this regard, Governor Brennan shares the concern of many that we are also all Federal taxpayers but the people of Maine for a century have been contributing to the support of Federally recognized tribes all over this country. It seems only fair that those other states should shoulder their fair

share here for the first time. The Governor is also sure that, just as he is not, the Maine Congressional Delegation will not endorse any Federal Settlement which is unreasonable, either in costs per acres, number of acres, or total Federal tax dollar costs and he will support the Delegation's decision.

Finally, Governor Brennan believes that this is a momentous time for Maine. Through difficult and extensive negotiations, a jurisdictional agreement has been reached. It is an agreement that requires your careful and deliberate scrutiny, taking as much time as you feel necessary. It requires nonpartisan consideration and your best judgment on a very diverse array of issues, realizing that no one can be totally satisfied of so complex an agreement but it also offers the promise of a framework for a just and equitable solution which will promote opportunity, security and equality for all the people of Maine. Thank you very much.

SENATOR COLLINS: Thank you very much, Mr. Flanagan. Our next speaker representing the State, I believe is to be Mr. James St. Clair.

MR. ST. CLAIR: Ladies and Gentlemen of the Joint Select Committee, my name is James D. St. Clair. I am an attorney from Massachusetts. I have been retained by the Attorney General of this great State, the State of Maine, to assist to the best of my ability in an attempted resolution of the problems that now face the State, including, if that becomes necessary and the Attorney General remains willing, to assist in the trial of the case. I have worked with my associate, Mr. William Lee, with the Attorney General, his assistant, Mr. John Patterson, and others in his office, with Counsel representing the Governor, with expert legal

authority within the State of Maine, and principally Mr. Paul Frinsko from Portland, in an effort to lend such assistance as we all can toward an amicable resolution of these problems if that be possible.

Initially, we made a very thorough review of all of the documents that had been carefully acquired by the Office of the Attorney General, both before Mr. Cohen's ascendancy to that Office and during his service as Attorney General. We reviewed every relevant decision of the Courts of the United States that addressed issues that we anticipated might be raised in this case and at the request of the Attorney General, gave him the best of my judgment as a result of that analysis. I think I can say without any reservation whatsoever, that this proposal fairly reflects my analysis of the potentials for winning and losing that the State runs in this dispute. It's a very complicated matter and I think if I may impose upon you for just a few minutes, I'll try to explain what the real complications are and I will not try to get into the minutia of it at this time, of course. But we must realize that this Settlement that is here proposed for your consideration is only part of what is a tripartite Settlement if ultimately it is adopted. The reason for that is that the Federal Government is really the only authority that can clear the titles in the State of Maine. This Legislation does not even purport to try to do that because the Legislature, the Governor and the Attorney General of the State of Maine do not have the power, effectively, to clear the titles that would be affected by this claim. Therefore, the United States must be a party to the overall settlement. The function of the proposal now before this Committee is to deal with the relationships between the parties with respect to the lands and natural resources and the

jurisdiction of the State of Maine if and only when the United States effectively cancels or terminates Indian title to the lands. Nothing will happen until that is done. This Act will not even become effective until Federal Legislation is enacted that effectively disposes of all Indian claims in the State of Maine. It is for that reason that this Settlement really has two phases. The first is the phase now presented to you. The second phase is the phase that must be dealt with by the Congress and the Delegation from the State of Maine and the Indian Tribes. We have, of course, an abiding interest in those negotiations but we have no real role to play in them. I, for example, do not represent the United States. I represent the State of Maine. I have no standing really nor does the Attorney General have any standing to negotiate on behalf of the United States with the Tribes. We have an abiding interest, of course, as I said in those negotiations and we have consulted, as recently as within the last couple of weeks, with the Congressional Delegation in Washington, with the Attorney General of the State of Maine and with the Governor of the State of Maine. It is for that reason that the financial aspects of this proposal really are of interest to us but we have no participation in them. It is Federal money that is involved and that will have to be resolved between the Tribes and the Federal Government. But once that is resolved, hopefully, and the necessary Legislation is enacted at the Federal level to clear the title in the State of Maine, if this proposal is adopted by the Legislature and signed into law, the State of Maine is ready to receive and administer and deal with the property that otherwise would be clouded by these claims and that's the purpose of this proposed Legislation. It

would be meaningless to have a Federal Settlement without the State being prepared to deal with the situation that would then result.

It is far better, we believe, to have the State enactment--the State Legislation in place so that the Federal Government can ratify and confirm that legislation, give it the power of Federal authority as well as State authority and then clear the title to the lands in the State of Maine that would otherwise be subject to this claim. I'm sorry to take so long to elaborate that point but I think it's important to our understanding as to why, for example, we have no real say as to how much money is involved or, perhaps, how many acres would be involved. We have an interest in those, as I have said, but we have no standing to affect that result. That is the responsibility of the Tribes and the Congress of the United States.

Now, I think I should say a few words to you about my view of the duration of any proceedings that might flow as a result of a failure to settle this matter. It has been suggested that it might well take as much as five to six years through all of the appeals and I think that is very conservative. It could take much longer than that. For example, I tried the case representing the Town of Mashpee in Massachusetts. We tried only one issue, a preliminary issue, out of at least seven to ten other major issues. That issue took three months to try and two years to go through the appellant review necessary right to an application for certiorari to the United States Supreme Court. That was just one issue--a preliminary issue, namely, did the Indian people in the Town of Mashpee constitute a Tribe within the meaning of the Federal Legislation. We never did address the question as to have they always been a Tribe, what

lands were they entitled to recieve, in fact, if they had been a Tribe, whether or not there had been violations of the Federal Law and on and on and on and on. So when it's suggested to you that this would take five or six years, that is a very reasonable estimate.

It's been suggested to you that the cost of legal fees and expert fees would be at least a million dollars. That, indeed, is a conservative estimate. From my experience, for example, in the Town of Mashpee in trying that one issue, covering a period of three months of actual trial and two years in the appellant process, cost the Town a quarter of a million dollars. Imagine, if you will, the complexities of this case as compared to that case. It would not surprise me at all if this case were to take a year at least in the trial stage and maybe longer. After all, we're dealing with millions of acres and billions of dollars and so when you are given these figures, I think they are extremely realistic. In fact, it is quite conceivable in my view that they would go well beyond the time constraints and the monetary constraints that have been suggested.

As for the economic and social dislocation that might well result if a suit were in fact brought as the United States Court of Appeals for the First Circuit says must be done and a delineation of the property that would be involved in that suit becomes a matter of record, I don't have to tell you what would happen to the marketability of the titles. I can tell you that in the Town of Mashpee, there was no such thing as the sale of property. It could not be done. The banks wouldn't give a mortgage, the title insurance compies wouldn't insure the title. The disruption of that was enormous for that Town. When the suit was brought, there was pending a bond issue for a new school which had to be cancelled.

They couldn't collect all of the taxes. People who had the misfortune of becoming old couldn't sell their property. The estates could not be administered and on and on and on went the problems. Even today, as Attorney General Cohen has suggested, the scars really have not healed. They still have problems with respect to it. The Indian people, although they have lost, still say, well, we're going to try again. We'll file another suit. I personally believe they have no such basis for it but the mere thought of such a claim tends to and does continue to disrupt that small town. I would only believe that something similar to that could occur in the State of Maine unless this matter is settled without such a trial and without such a dislocation. The social dislocation, I think, would be very obvious.

For the last analysis, then, even though I am a trial lawyer, I make my living and my profession is to try cases. I think this case on some basis--not any basis by any means--but on some basis is fairly settled. I think that this proposal, as I said at the outset, in my judgment fairly reflects the potentials for winning and losing that exist between the State and the Tribes. I would say this first, that I believe the State would ultimately prevail. The Attorney General has said that he thinks--I think he said the chances were 60-40. I would not disagree with that. I might believe they might be a little higher but everyone has to exercise his own judgment. I don't believe there is such a thing as a hundred percent case so you're not dealing with a range of 1-10, you're dealing with a range of 1-8, something like that, but the State of Maine in my view ultimately would prevail. What does this settlement do, though, is the real question that now faces you. This

Settlement in my view strikes a fair balance between the historical relationships that have existed between the State of Maine and its Indian citizens that result largely from previous acts of the State, tracing back, if you will, to treaties between the State and the Tribes and so forth. This tends to keep in place that historical relationship with which you are all accustomed, to which your forefathers have been accustomed and which your forefathers created. I guess it should be forefathers and foremothers now. This in my view continues that relationship. On the other hand, it reflects in my view a recovery for the State of what has been eroding recently in terms of the State jurisdiction, the State sovereignty, if you will, by reason of recent Court decisions. If adopted, this proposal would recover for the State those rights, that jurisdiction that may well have been lost or at least some decisions indicate it may have been lost because of those decisions and principally, of course, the Soccabasin Case is the most, I think, well-known example. This recovers for the State the sovereignty that otherwise would be eroded by that and similar decisions. I think, then, that if all of the factors are weighed, if the enormity and the complexity of the claim and its expense, a fair appraisal of the chances of winning against losing, this proposal fairly strikes a balance that I am satisfied in my own judgment reflects, as I say, the historical realities in the past and recovers for the State its rightful jurisdiction and sovereignty and puts to rest for all time in the future those irritating differences, social relationships if you will, between the Indian and non-Indian citizens of the State. It is not going to immediately preserve or create peace and harmony but over a period of time in my judgment it will result in that.

It treats fairly both sides and is a fair appraisal of the rights of both parties in my judgment. Thank you very much.

SENATOR COLLINS: Thank you very much, Mr. St. Clair. Mr. Cohen, does this conclude the State's presentation? (Mr. Cohen indicates affirmatively) We are now ready to hear from representatives of the Indian Tribes. The Committee will recognize Mr. Thomas Tureen.

MR. TUREEN: Senator Collins, Representative Post, Members of the Joint Select Committee. My name is Thomas Tureen and I appear on behalf of the Penobscot Nation and Passamaquoddy Tribe in support of the proposed Settlement to the Maine Indian Land Claims. The Legislation before you deals only with the jurisdictional issues in the land case. These are issues which have already been tested in Court and on which the Maine Tribes have been uniformly successful. The most important of these cases was State vs. Dana Soccabasin in which the Maine Supreme Court unanimously ruled last July that the lands of the Maine Indian Tribes constitute Indian Country as that term is used in Federal Law. As such, Indians residing on Tribal Land in Maine are not subject to the civil or criminal jurisdiction of the Courts of Maine. Indian businesses on Indian Lands are not obliged to pay State Sales Taxes. Indians who reside and earn their income on Indian Lands are not obliged to pay State Income Taxes. State Environmental Laws, Business Regulations, and other Governmental Controls do not apply on Tribal Lands and the Tribes have an unfettered right to regulate hunting and fishing. In light of all this, one might ask why the Indians were willing to even discuss the question of jurisdiction with the State but simply the answer is that they were obliged to do so if they wanted to effectuate the Settlement of the

monetary and land aspects of the claim which they had already worked out with the Carter Administration.

Last summer, as you may recall, the Tribes and the Administration presented the Maine Congressional Delegation with a plan for settling the claim which called for a 27 million dollar trust fund and 300,000 acres of land. These lands were to be purchased in part with Federal Agency Funds and in part with funds appropriated by Congress. The Congressional Delegation responded, however, that it could not move forward with Legislation to effectuate the proposed Settlement until a jurisdictional arrangement had been agreed to by State Officials. Thus, the Tribes opened negotiations with the State concerning the question of jurisdiction not because they wanted to do so but because they were obliged to do so to obtain a Settlement that they had already negotiated with the Federal Government. I was not at all certain how these negotiations would develop. Deep feelings of suspicion and mistrust had developed, not only during the course of the litigation but also during 150 years of not always honorable State wardship. I would remind you that the Maine Indians were the last Indians in the United States to become fully unfranchised. It was 1967 before they received their right to vote in all elections that affected their lives. I would remind you that it was as recent as the mid 1950's that the State of Maine built a highway through the tiny Pleasant Point Passamaquoddy Reservation without the slightest suggestion of due process and with absolutely no compensation and I would remind you that it was only 100 years ago that the State of Maine leased nearly 5,000 acres within the Indian Township Passamaquoddy Reservation for 999 years to provide funds for building a highway through that Reservation which the

Indians neither wanted nor needed. But as the negotiations progressed, these feelings of mistrust began to break down and a spirit of reconciliation made itself felt in those negotiations. Both sides began to attempt to understand and to the greatest extent possible, accommodate the needs of the other. For the State this meant, among other things, understanding the Tribes' legitimate interest in managing their internal affairs, in exercising tribal powers in certain areas of particular cultural importance such as hunting and fishing, and securing basic Federal protection against future alienation for the lands to be returned in the Settlement. For the Indians it meant, among other things, understanding the legitimate interests of the State in having basic laws such as those dealing with the environment apply uniformly throughout Maine. Increasingly, both sides found areas of mutual interest as, for example, in the case of the General Body of Federal Indian Regulatory Law which the Tribes came to see as a source of unnecessary Federal interference in the management of Tribal property and the State came to see as a source of uncertainty in future Tribal-State relations. In the end what we wound up with was a blueprint for a governmental relationship between Indians and non-Indians alike--between Indians and non-Indians unlike that which exists anywhere else in the United States. The Plan is very much a compromise but both sides see it as a framework within which the spirit of cooperation and mutual understanding which developed during the negotiations can continue in the future. With this Plan, it is my clients' belief that we in Maine will be able to avoid the bitterness and rancor which has all too often characterized Indian-non-Indian relations in other parts of the Country. Before closing, I feel that I should say a few

In closing, I would summarize my remarks by saying that I am pleased that the Tribes were able to negotiate a proposed Settlement of these claims. The prospect of full-scale litigation with its attendant economic disruption is something that the Tribes have always said they wanted to avoid. At the same time, I must be candid with you and say that in my opinion we would win that lawsuit if a Court test came to pass. The long string of decisions in these cases in our favor provides strong support for that view but hopefully with the proposal before you, all of that can be avoided. I thank you very much for your consideration. I would like to introduce Andrew Aikens, who is Chairman of the Passamaquoddy-Penobscot Negotiating Committee, who will speak next and following him, Terry Polchies, who will speak on behalf of the Houlton Band of Maliseet Indians. Thank you very much.

SENATOR COLLINS: Thank you, Mr. Tureen. Mr. Aikens.

MR. AIKENS: Okay. Mr. Chairman--

SENATOR COLLINS: Would you lift the microphone upward just a little--that's it. Thank you.

MR. AIKENS: Mr. Chairman and Members of the Committee, my name is Andrew Aikens and I am the Chairman of the Tribe's Land Claims Committee. The Settlement Agreement is the product of many years of work between the State and Indian Leaders. The general members of the two Tribes have in good faith passed and approved the agreements and we will, I might add, uphold our parts of it. As you know, the Bill presented here has the support of the leaders in Maine. In our meetings with Attorney General, Richard Cohen, it was agreed that neither side would make any changes or amendment in the package. We have not and we expect

words about the land aspect of the proposed Settlement. As you know, the proposal calls for sufficient funds to purchase 300,000 acres for the Tribes. This acreage figure was not picked arbitrarily but rather was the product of extensive and detailed negotiations with the White House. In the Fall of 1978 when the President announced that he would support a totally Federally funded solution of the Maine Claims, the large landholders agreed to attempt to locate 200,000 acres which could be purchased in connection with the Settlement. My Clients, believing that they could locate an additional 100,000 acres on the open market began evaluating the lands that these large landholders offered. The Tribal Negotiating Committee was assisted in this effort by the Sewall Company which it hired as a consultant. Much of the land which was initially offered was widely scattered or involved common and undivided ownership interests. As the process continued, the Committee sought to find lands that were well located and which could be easily managed in the future. Substantial progress has been made in this process and I have given the Committee Chairman this morning a list of lands which the Negotiating Committee has placed under option. In addition to the lands on this list, the Negotiating Committee has arranged for options for the purchase of two saw mills owned by the Dead River Company. One of these mills is in Princeton, the other in Stillwater. The list which I have provided also includes one small blueberry farm which the Tribes would plan to operate. These going businesses should give the Tribes a healthy start in their long-range goal of economic self sufficiency and should have a positive impact in terms of jobs not only for Indians but non-Indians as well.

the same in return from the Maine Senate or House.

Briefly, our claim is the strongest and most halable by any Indian Tribe in this Country. Unlike the estimates of Mr. Cohen and Mr. St. Clair, we believe our chances of winning are perhaps 80-20; however, we would prefer not to draw out the matter in Court and we ask that you will recommend to the full Maine Senate and House the approval of LD 2037. I might add, we are interested in building a new relationship with Maine, one of mutual trust and respect and, finally, anyone who is interested in learning how we feel about people who will reside on the lands we will purchase, we do not intend to displace anyone. Thank you very much.

SENATOR COLLINS: Thank you very much, Mr. Aikens. Now, Mr. Polchies.

MR. POLCHIES: My name is Terry Polchies. I'm Chairman of the Houlton Band of Maliseet's Negotiating Committee. Madam Chairperson, Mr. Chairman, Members of the Committee, I'm pleased to appear before you today on behalf of the Houlton Band of Maliseet Indians and to stand here together with our other Maine Tribal Leaders.

The Maliseet Tribe has always used and occupied the lands in the St. John Watershed. About a hundred years ago, the Houlton Band of Maliseet Indians settled in and around Houlton. As the old Indian hunting economy in Aroostook County changed, our members today are the descendants of the aboriginal family groups. Most of our members are full blood and half blood Indians.

Other Maliseet family hunting groups settled to the North in Quebec and to the East in New Brunswick. Unlike the Canadian-side bands and our close relatives to the South, the Passamaquoddy Tribe and the Penobscot

Nation, the Houlton Band of Maliseets has never had a recognized land base and we have generally been excluded from Indian Social Service Programs. As a result, we have the lowest income and most disturbing social and economic statistics of any Indian Tribe in the Northeast.

The Houlton Band of Maliseet Indians supports our brother Tribes. We have labored long and hard in negotiations with State Leaders to produce the Legislation you are now considering. Any Legislation before you such as this must, of course, be the product of compromise. The Legislation before you is a necessary first step in the process of settling the Maine Indian Land Claims. It remains for Congress to take the next step.

The Houlton Band of Maliseet Indians has agreed that the overall Legislative Settlement Package must (1) provide recognition of the status of the Band as an Indian Tribe so that deeply needed Federal Indian Services will be provided to our people, and (2) provide a secure and permanent land base that will continue to be owned by the Band and for the use and for the benefit of our members, our children and their children, forever. We pledge to continue to work with State Officials and the Passamaquoddy Tribe and Penobscot Nation and believe that these objectives can be achieved. Only if these goals are reached can there be a just and fair settlement for the Houlton Band of Maliseet Indians.

We look forward to a new and productive relationship with Maine and all our neighbors. Thank you for this opportunity to appear before you today. Thank you.

SENATOR COLLINS: Thank you, Mr. Polchies. Mr. Tureen, does that conclude the presentation?

MR. TUREEN: Yes.

SENATOR COLLINS: Thank you. We are now ready to hear from representatives of the Landowners who may be involved in future land sales. The Chair recognizes Mr. Donald W. Perkins.

MR. PERKINS: Senator Collins, Representative Post, Members of the Select Joint Committee, my name is Donald W. Perkins. I'm appearing as a proponent of this Legislation on behalf of Great Northern Paper Company, Diamond International Corporation, Georgia Pacific Corporation, International Paper Company, St. Regis Paper Company, Scott Paper Company, Pingree Heirs, the Dead River Group and Bertrand Takach. The Legislation which is before you today deals with the jurisdictional matters between the State and the Tribes. Those are primarily public issues and they have been addressed thoroughly by the Attorney General and other State Officials. The landowners and their representatives are interested in these arrangements as neighboring landowners and members of many of the Maine Communities where these lands are located. They support the proposal. In our opinion, the Attorney General and the Tribes have moved beyond the nation within a nation problem to a well-designed arrangement in which critical Tribal Interests are protected within the context of Maine Laws. I particularly want to congratulate the Tribes for their wisdom in perceiving that discriminatory arrangements such as exist elsewhere in the Country do not build good human relations.

I now want to turn to the subject of land sales. While land sales are not the subject of this State Legislation, they are, of course, part of the entire picture and their location indicates where the Indian Territory will be located.

On February 6, 1978, the White House Work Group issued a joint memorandum of understanding with the Tribes calling for the contribution of 300,000 acres of private land for \$5.00 per acre and for payments from the State of Maine for the Tribes of 1.7 million dollars annually for the next 15 years. It also proposed long-term options for the Tribes to purchase an additional 200,000 acres at fair market value. Governor Longley, then Attorney General Brennen, Industry Spokesmen, Legislative Leaders, the Media and the Maine Public made it clear that the land of Maine Landowners should not be appropriated in that manner and that Maine should not bear the burden for a Federal Responsibility.

Finally, in the Fall of 1978, President Carter recognized publically that the Maine Indian Land Claims were a Federal responsibility and that the State and Landowners within the State should not be so burdened. Shortly after the White House proposal, I and other representatives of the major landowners met with Governor Longley, Senator Muskie, and we talked with other State Officials and Federal Administration Representatives. We were urged to try to find lands where the owner was willing to sell and to negotiate fair market value options with the Tribes. Governor Longley made it clear that owners were not to be forced to sell and that the prices were to be negotiated not by the State but between the owners and the Tribes. We sought lands from every source we could think of, brokers, newspaper advertisements, major landowners, medium size landowners, etc. The first list of approximately 100,000 acres involved many small parcels, as each land owner came up with land that he could best spare from his operations. As a result, some of these parcels were in remote locations, some were very rough or hilly ground, some were cut open.

It was my estimate approximately two years ago that land of that nature could be pulled together for approximately \$150 an acre. Obviously, better land costs more and prices have risen in the intervening two years. I don't know where the White House came up with a figure, which has been reported from time to time in the press of prices ranging from \$100 to \$112 two years ago. I do know that both the Maine Attorney General's Office and I told them those estimates at that time were incorrect. The Tribes persisted in their efforts to obtain better land, to obtain lands near their reservations, located near markets, contiguous so as to facilitate management and with a good stocking of timber. Many parcels were considered, many were rejected either because of location or inability to agree on price with the owner or for other reasons. As their search continued, they found several non-paper mill owners who were willing to sell substantial tracts of land. As you can see from the current map, the Tribes have made major progress in locating lands that are contiguous and more desirable to them. It is not surprising that the fair market value of those lands is higher than the first selection of lands.

Now from the beginning, the land sale negotiations were conducted upon the basis of §1033 Tax Treatment; namely, that if the landowner reinvests in like property within three years, no capital gain will be recognized. Mr. Lipshutz, Counsel to the President, was advised of that fact by my letter of October 26, 1978, copies to Governor Longley, then Attorney General Brennan, Members of Maine's Congressional Delegation and various other interested parties. That Tax Treatment is an essential

ingredient of the willingness of many of these sellers to sell and of the price negotiated. Furthermore, it is fair treatment. When a private landowner steps forward at the request of Government Officials to sell land to solve a public problem and to facilitate the meeting of a Federal responsibility, that Government should not levy a tax upon him, i.e. take away 28 cents or more of every dollar of his sale proceeds and thus reduce his capacity to replace his land. His old tax basis carries forward and if he ultimately sells that replacement land, he will pay his tax. On the other hand, if the owner does not reinvest in like property in three years, he pays the tax. This treatment is consistent with other tax provisions that permit exchange of lands without recognition of capital gains. The suggestion that §1033 Tax Treatment is some kind of a rip-off is not supported by the facts. In any event, the question of appropriating funds is primarily the concern of the Congress and the Federal Administration. I am not a land appraiser. I have carried prices back and forth between individual owners and Attorney Tureen with respect to most but not all of this land. Mr. Tureen has been assisted in his efforts by an experienced appraiser, Leonard Pierce of the James Sewall Company. My perception is that they have horse traded hard and capably. I expect that the Interior Department of the United States which manages the Federal fiduciary responsibility for Indian Tribes, the Maine Delegation, the appropriate committees of the United States House and Senate and the White House will look very carefully at all aspects of this proposal. The landowners welcome that examination. The landowners have come forward to sell land because they have recognized that the only alternative was this huge lawsuit with great impact on them and on all segments of the Maine Public as the Attorney General and other speakers have indicated. We urge

you to approve the State Legislation. If it fails, I anticipate that we will have a lawyers dream. The biggest lawsuit the Courts have seen. A nightmare for every landowner and every public authority concerned with the area north and east of the Kennebec Valley.

The landowners are in the process of communicating with their leasees. I'm going to leave with you copies of letters from Dead River and Great Northern to their camp-owner leasees in which those owners are given the opportunity to purchase their lots and thus accept those properties from the Indian Territory. In addition, the Dead River letter spells out that if they do not elect to purchase, they will accept the lots from the transfer. I am confident that the various landowners will resolve these matters with their leasees in a considerate manner. In our opinion, your State Officials have done a good job, starting with Governor Longley and Attorney General Brennan and continuing with Governor Brennan and Attorney General Cohen. This Settlement not only avoids the litigation but it achieves this result without giving up State funds or State lands. In fact, the Federal Government will replace the State as the provider of a substantial portion of existing programs provided to the Tribes. In addition, the influx of Federal money is going to mean a great deal to the economy of northern and eastern Maine, not only in the Indian Communities but in the surrounding areas. The Settlement of major disputed litigation is always frustrating. I appreciate that frustration of those who are not happy with this Settlement. Each side would rather win; however, we have to weigh the benefits against the costs very carefully because of the great burdens involved. When you do that, I'm confident that you will conclude that this legislation should be enacted

and this Settlement effort should move forward to the further phase with the Federal Government. Thank you.

SENATOR COLLINS: Mr. Perkins, you submitted to me this morning a list of lands under option in connection with the Settlement. Are there additional copies of that list available?

MR. PERKINS: Yes, there are. That was submitted to you by Attorney Tureen; however, yes, there are additional copies available.

SENATOR COLLINS: Thank you.

MR. PEARSON: Mr. Perkins, are you going to be here at 3:00 to answer questions?

MR. PERKINS: Yes.

SENATOR COLLINS: The Committee would like at this time to address some questions to those participants up to this point. I'm going to invite each member of the Committee to ask such questions as they may have in mind at this point to any of the witnesses who have participated. Senator Conley.

SENATOR CONLEY: Mr. Chairman, I have one question of the Attorney General with respect to the claim and I would like to know with respect to the Indians and the Claim does this now give the right of an Indian to be an elected member representing citizens within the Maine Legislature?

SENATOR COLLINS: Mr. Cohen if you would come to the microphone, please. The question relates to whether Maine Indians would have a right to be a representative to the Maine Legislature.

ATTORNEY GENERAL COHEN: Yes, they would, Senator Conley.

SENATORY CONLEY: Thank you very much.

SENATOR COLLINS: Senator Redmond, do you have a question?

SENATOR REDMOND: No questions.

SENATOR COLLINS: Representative Post.

REPRESENTATIVE POST: Mr. Cohen, could you tell me, please, if the Indian Territories would be considered an existing municipality or a new municipality as far as State Statutes are concerned and I am particularly interested in the zoning issue.

ATTORNEY GENERAL COHEN: They would be considered a new municipality.

REPRESENTATIVE POST: A new municipality and so it would come under the Statutes for a new municipality.

ATTORNEY GENERAL COHEN: Yes, that's correct.

REPRESENTATIVE POST: Could you also tell me whether or not the State would be assessing the valuations for the payments in lieu of taxes? Perhaps I should ask--

ATTORNEY GENERAL COHEN: Yes, we don't have good arrangements here. Why don't you just repeat that, if you would.

REPRESENTATIVE POST: Whether or not the State would be assessing the valuations for the payments in lieu of taxes, such as county taxes and any other taxes that the Territories--any other payments in lieu of taxes which the Territories might be liable for.

ATTORNEY GENERAL COHEN: The consensus of my legal staff is yes, they would.

REPRESENTATIVE POST: The State Tax Assessor would be responsible for establishing the valuation?

ATTORNEY GENERAL COHEN: Yes.

REPRESENTATIVE POST: Could you tell me if land that is presently

in the Maine Forestry District that might be incorporated in the Territories would remain in the Maine Forestry District?

ATTORNEY GENERAL COHEN: I think on that point--I know you've raised that before--I'll have Mr. Patterson address that issue.

MR. PATTERSON: Because of the way in which the Maine Forestry District is defined under the Statute, it is not clear whether the Indian Territories would be within the Forestry District or not. In our judgment, however, the Legislature could amend the Forestry District at any time it wished to include any Indian Territory that it wished as any other municipality within the Forestry District. You can do that as a matter of general amendment to the provisions of the Forestry District Act. In addition, the Indian Tribes themselves can petition to be included within the Forestry District under the present Statute.

SENATOR COLLINS: The present speaker is Mr. John Patterson, Deputy Attorney General.

REPRESENTATIVE POST: Presently, municipalities exist of contiguous land and the Indian Territory would not. Would it be possible since we do not place portions of a municipality in the Maine Forestry District to place portions of the Indian Territories in the Maine Forestry District and to leave other portions out?

MR. PATTERSON: In my judgment, yes.

REPRESENTATIVE POST: We would be able to treat them differently than municipalities in that instance?

MR. PATTERSON: Well, I think you have the power to include a municipality partially in and partially out of the Forestry District. It's a State Tax and in my judgment you can make that--you can put that State

Tax where you want to put it and you can treat this municipality the same way--well, this Territory the same way as you would treat any other municipality.

REPRESENTATIVE POST: But the Tax is a total liability of the municipality and it's your understanding that we could place only portions of a municipality in that District even though the liability is on the whole municipality?

MR. PATTERSON: Well, as I recall the Tax is also related to a service which the State performs in terms of fire suppression, I believe. So you could relate the Tax to the service performed and then you could apportion the Taxes to the municipality on some basis. I think there's a good deal of flexibility in the Maine Forestry District Statute as written to make it work in whatever way is fair and whatever way the Legislature wants to.

REPRESENTATIVE POST: But if we were going to allow portions of the Territory to be in the Maine Forestry District and portions not to, would we have to at least allow that same provision for municipalities?

MR. PATTERSON: Not necessarily. You don't give municipalities now the choice of whether they're going to be in the District or not. Some of them are by Statute compelled to be in the District. I don't think you'd have to give any municipality that choice.

REPRESENTATIVE POST: But municipalities could come to the Legislature and ask that only a portion of their land be in the Maine Forestry District?

MR. PATTERSON: Sure. They could come and ask, yes.

SENATOR COLLINS: Senator Redmond.

SENATOR REDMOND: Attorney Cohen, the trappers who have lines in those areas that will be involved and will be losing part of their livelihood because of this exchange, can they look forward to some compensation from either the Federal Government or from the State.

ATTORNEY GENERAL COHEN: There's nothing, Senator Redmond, in the Federal Act that would appropriate any particular monies towards the trappers. Anything in that regard would have to be done--as far as State Legislation, I don't believe that--I might be wrong but depending upon the type of Regulations that are adopted governing trapping, there will not necessarily be any preclusion, it's my understanding, of trappers that presently operate on those particular lands but that's something that will have to be developed through Regulations that the Indians would have here.

SENATOR REDMOND: Thank you.

SENATOR COLLINS: Representative Dow.

REPRESENTATIVE DOW: Cohen, the Fish and Game Department was very concerned about the ability of stocking fish in the ponds that the Indians control. I know they have been doing some work on it but I don't seem to have any answers to that. Can you give me something--

ATTORNEY GENERAL COHEN: This is to the live bait problem?

REPRESENTATIVE DOW: Live bait and of stocking fish in Indian waters or if the Indians have jurisdiction over the stocking of fish.

ATTORNEY GENERAL COHEN: We do not--yes, I think Deputy Attorney General Patterson can respond. He's been working on those particular questions the last few days as they've come up.

MR. PATTERSON: In our judgment, the way in which the Implementing

Act is currently written, the Tribes would not have jurisdiction over stocking of fish but only over taking of fish and then in only small ponds. With respect to the use of live bait, we think there is ample procedural protection in the Act as written that would authorize the Commissioner of Fish and Wildlife to go to the Tribes and ask them to adopt regulations governing the use of live bait. If the Tribes did not enact such regulations regarding live bait and if the Commissioner believed that the absence of such regulations created a reasonable likelihood of damage to other fisheries, he could, himself, apply such standards regarding live bait to the ponds that the Indians--that were within Indian Territory.

REPRESENTATIVE DOW: This could be--after the fact, could the Bill be amended in any way that would make sure that this does not occur?

MR. PATTERSON: Well, as I said, we think it's possible with the Bill written as it is for the Commissioner of Fish and Wildlife to go the Tribe immediately even before they get Territory Land and ask them as soon as the Bill becomes operational to adopt ordinances governing the use of live bait. If they fail to do that, although we have reason to believe that they would be cooperative in that respect, if they fail to do so, however, the Commissioner of Fish and Wildlife could put in process through the administrative procedures in the Act his own authority to impose such limitations on ponds within Indian Territory.

REPRESENTATIVE DOW: Thank you.

SENATOR COLLINS: Senator Conley.

SENATOR CONLEY: Attorney General Cohen, as the Act is presently before us and once it is submitted for debate on the Legislative Floors in both branches, both Houses, I would like to know if it is subject to

amendment by the Legislature and if so amended by the Legislature, does this Act have to be--go back to the negotiating table, so to speak, with the Attorney General's Office and with the Indian Tribes?

MR. PATTERSON: I have made it clear throughout the 13 months of negotiations that I've carried out in this matter that, while understanding that any substantive changes once we reached an agreement could take place, that I did understand through the negotiations that as far as the Indian Tribal Negotiating Committee was concerned, they would consider that necessity to go back and possibly renegotiate or go through the ratification process again. I indicated all along clearly that, of course, I had no control over, naturally, what the Legislature could do and could certainly amend any Act or Bill but I indicated, and I believe I've done this, that I would make it known to the Legislature the possible problems in this particular area and so it could possibly result--to answer your question directly--in a substantive change in the agreement having to go back through the process.

SENATOR CONLEY: And if there was a substantive change made and it did go back to the negotiating parties, yourself and the Indian Tribes, and that was resolved in a sense that you could not get together, then there would be no Act going before Congress for them to start appropriating monies or in--in other words, the State Law must be ratified first before the Federal Government would take any action.

MR. PATTERSON: Well, I feel strongly that this is essential as far as the State's concerned because Congress could act without the State jurisdictional act but what we would have, I believe, if Congress

decided to act and the Legislature didn't act, Congress has the plenary power to act, extinguish a claim, but I'm afraid my clear feeling is that the applicability of laws then would be totally opposite what exists in this particular LD in that State Laws would generally have no applicability as exists in most of the states as has been indicated before.

SENATOR CONLEY: I have one final question, Attorney General Cohen, recently we've heard from former Governor Longley making a statement that it seems as though everyone was in a great deal of a hurry to seem to resolve this issue and I know very well how long this process has been taking through your Department and your predecessor and I wonder if you believe that with this hearing here today and the Bill being submitted to the Legislature next week, do you believe that the Legislature in its wisdom should perhaps delay this for ten days, for example, for them to be able to absorb what is in all this material that has been presented to this Committee today prior to just going in and getting into all this hastling and then perhaps delay the enactment of this Bill.

ATTORNEY GENERAL COHEN: Well, I would hate to substitute my judgment for the Legislature. I feel that as expeditiously as possible but with the due reflection that would be necessary by the Legislature in thinking about all aspects of this thing, the appropriate time should be taken. But on the other hand, I feel that time is somewhat of the essence also and I think there's just got to be a balancing of those things and whether next week in one or two days the Legislature can possibly be reflective enough to intelligently vote on this proposal, I just don't know. I would hope that if that could not be accomplished next week, that it not go on beyond that because it's just my feeling that it

would jeopardize that. Incidentally, I have never, of course, suggested that anyone should rush into this thing. When I entered into negotiations 13 months ago, I had no idea if or when we might ever reach a settlement but I was determined from my standpoint to move this thing along as soon as possible and either make a decision one way or another and not just let it linger on. So I would hope that the Legislature, you know, could move next week, however, I could see it possibly not being time enough for some people and if that was the case, as I say, I would hope that it would not linger on more than several days or so beyond that.

SENATOR COLLINS: Representative Mitchell.

REPRESENTATIVE MITCHELL: Mr. Cohen, I have two related questions. What would be the State's liability should the State ratify its portion of the Agreement and the Federal Government not and is there a time limit in which the Federal Government must act after the State acts.

ATTORNEY GENERAL COHEN: As far as liability, you mean other than the lawsuit in Court?

REPRESENTATIVE MITCHELL: Yes.

ATTORNEY GENERAL COHEN: If the State enacted this particular LD and nothing took place as far as Congress goes, they would have no liability. This Bill would have no effect whatsoever without Congress moving and in essence ratifying this particular act. As far as the time frame--looking at the total State-Federal picture--is concerned, it's been my understanding unless a Bill is in to Congress formally in some time in May, I'm not sure about that, it could possibly jeopardize us. Again, I have only met, along with the Governor, and my Staff, Mr. St. Clair, with the Congressional Delegation some two weeks ago and we're going to be meeting with them again. This is, of course, the first

step here and I have no idea--it would be their judgment really as to what the critical dates are.

REPRESENTATIVE MITCHELL: Just following that along for a moment, suppose that this particular session of the Congress does not act, could either party to this negotiation on the State-Indian level withdraw its approval if we should approve in this session of the Legislature the State's portion of the Agreement. Could either party negate that?

ATTORNEY GENERAL COHEN: Either party could do that, yes, and we have, of course, constantly up until several months ago--of course, there is a suit filed in this matter in the Federal District Court, as you know, in the Southern District and the State has not filed an answer and we have been meeting with Judge Gignoux and keeping him apprised as we go along so I'm not sure if things did not move in the time frame of this Congress just what the consequences would be.

SENATOR COLLINS: Representative Sewall.

REPRESENTATIVE SEWALL: Thank you, Mr. Chairman. I'd like to ask a question of Mr. Perkins. Mr. Perkins, on the lots--the camp lots--which are now leased on private property which could then be bought by the people who are now leasing them, is there guaranteed access to those lands? Has that been worked out?

MR. PERKINS: That's one of the things, of course, that has to be provided. You'll notice that in at least one of the two letters, I think in both letters, of which I delivered to you copies, there is reference to access. Camp owners have access now and when the description of that which is to be conveyed in completed, it will be necessary, of course, to insure that that access is protected. Obviously, a camp lot without

access isn't worth very much to you and you'll find that one of those letters specifically, I think perhaps both, deal with it. But clearly, yes, it's not only a question of the camp lot but access to it.

REPRESENTATIVE SEWALL: Thank you. I just have one other question and that is, I'm wondering about the change in the status of the Fish and Game Laws on the property which is now owned by the private owners and will eventually if things go along this way be owned by the Indian Tribes. Isn't it possible now under the Fish and Games Laws that the private owners could prohibit both trespass and hunting on those lands if they so choose?

MR. PERKINS: That's correct. A landowner--private landowner has the right to close his lands except for access on foot to a great pond, of course and, perhaps, also access to a public lot.

REPRESENTATIVE SEWALL: Thank you.

SENATOR COLLINS: Representative Gillis.

REPRESENTATIVE GILLIS: My question will be directed to the Attorney General and probably Mr. Tureen. In respect to the Fish and Wildlife Department and activities, doesn't this proposal set up a separate licensing agency within the Indian--

ATTORNEY GENERAL COHEN: It does allow in certain instances separate licenses to be issued although it is not a necessity and there's a distinction between the authority where the Tribes can promulgate regulations and where the Joint Tribal Commission. I have, incidentally, some questions that have been propounded by the Committee dealing with that specific matter and we will have written responses today on that but I can have on that particular point, if you'd like an explanation of

that, to have Mr. Patterson talk about that.

REPRESENTATIVE GILLIS: If possible, yes.

MR. PATTERSON: Under our interpretation of the Implementing Act, the Tribes could require separate licenses for hunting on Indian Lands or fishing on the small ponds within their jurisdiction. The Indian Tribal Commission could require separate licenses for fishing on the ponds or streams or rivers within Commission jurisdiction; however, in order to fish on those lands, you would not also be required to have a State License. You could just have an Indian Tribal License or a Commission License and fish or hunt of those lands or waters.

REPRESENTATIVE GILLIS: But in essence, a fisherman or a hunter, non-Indian, would be required to have two fishing licenses and two hunting licenses if he wished to fish and hunt of both lands.

MR. PATTERSON: If they required licenses.

REPRESENTATIVE GILLIS: Yes.

MR. PATTERSON: They have the authority under this, yes, you're correct if they required them.

REPRESENTATIVE GILLIS: Has a policy been established to lease these lands with a reference to the camp lots? Has a policy been set up?

MR. PATTERSON: The only policy we know of is the one which Mr. Perkins spoke of.

REPRESENTATIVE GILLIS: No, I'm speaking of the Indian Lands with respect to their Tribal Policies.

MR. PATTERSON: What is their policy about leasing?

REPRESENTATIVE GILLIS: Yes.

MR. PATTERSON: I would suggest that you direct that question to Mr. Tureen. I don't know what their policy about leasing is going to be.

REPRESENTATIVE GILLIS: Is Mr. Tureen available?

SENATOR COLLINS: Mr. Tureen, would you care to speak to that question about whether the Tribes have a proposed policy about leasing any land in their Indian Territory?

MR. TUREEN: Well, there is no formal policy in part because no lands have been acquired. What we're talking about at this stage, of course, are options to buy lands. Whether these particular lands are ultimately acquired is a matter ultimately for the Tribe to determine because the lands have to be acquired with their consent. I can say this, though, that it's the intention of the Tribal Leaders to have good relations with those who may have leases on any lands that are acquired and it's their intention to continue the policies, in essence, that have been in place before with regard to those lands.

REPRESENTATIVE GILLIS: Thank you.

SENATOR COLLINS: Thank you, Mr. Tureen. Mr. Brown.

REPRESENTATIVE BROWN: Mr. Chairman, I have two questions for the Attorney General. The first is a follow up on the question that was raised by Representative Sewall. Her question dealt with access to the leased camp lots. My question would deal with general access into and through the Indian Territories. Will that access be guaranteed to the general public or is there a possibility for that access to be restricted?

ATTORNEY GENERAL: Well, those lands can be treated in the same way as any other private lands are treated in the State. They could be posted, there could be trespass signs, you know, put up--these are things

that could--but whatever rights and laws inure to any private property in the State, the same laws would apply here and no more or no different laws and, of course, under that general scheme that exists and always existed in the State, a variety of things could happend depending upon the wishes of the private landowners; and I can't say what's going to happen but in talking about this during the months of negotiations, it's my understanding that there's been no intent, you know, to close any of these lands although the same rights would exist as any private landowner would have.

REPRESENTATIVE BROWN: My second question deals with the development of land use ordinances. Presently the unorganized territory is-- or development in the unorganized territory is controled by the Land Use Regulation Commission. What would be the procedure whereby the Tribes would develop their own land use ordinances and how would they then be accepted?

ATTORNEY GENERAL COHEN: Well, they could go through the same process as a new municipality. Representative Post discussed this, of course, a week or two ago and our feeling is that as a new municipality, would come initially the plan under the Land Use Regulation Commission for approval and then the same type of procedure that would exist in any other municipality would exist in this particular newly acquired area.

REPRESENTATIVE BROWN: So then that the new ordinances would have to be at least as strict as those that are now imposed by the Land Use Regulation Commission?

ATTORNEY GENERAL COHEN: That's correct.

REPRESENTATIVE BROWN: Thank you.

SENATOR COLLINS: Representative Hobbins.

REPRESENTATIVE HOBBS: Thank you, Senator Collins. I'd like to address this question to Mr. Tureen, if I may. Mr. Tureen, the State has raised the legal doctrines of laches in adverse possession as a reliance--partial reliance on their defense. In light of Judge Pettine's Narragansett Tribe decisions, is it your legal opinion that these defenses are in fact valid defenses?

MR. TUREEN: Judge Pettine held that they are not valid defenses. We feel that there is a long line of Supreme Court authority to that effect and we feel that authority would be controlling in any subsequent litigation.

REPRESENTATIVE HOBBS: One further point I'd like to ask you, Mr. Tureen. You have stated publicly on several occasions that it's your opinion that most of the legal issues have been resolved and that the only issue left was damages, is that still your--

MR. TUREEN: What I've said is that I have felt that the central legal issue in the case was the question of the applicability of the Nonintercourse Act and that has very much been the focus of the litigation over the last ten years. In 1972 the United States and the State of Maine argued that that Act didn't apply to non-recognized Tribes. Subsequent to that, and we were successful in the Passamaquoddy litigation on that point, subsequent to that, the State argued that that Act didn't apply outside of Indian Country or east of the former frontier. Those arguments have most recently been rejected by the Maine Supreme Court in State vs. Dana and in the Bottomly Case and in the Mohegan Case and I do still believe that that fundamental question, once you're beyond that, that there is case law precedence to deal with the remaining questions and

and from there you'd pass, essentially, to the factual issues to be tried.

REPRESENTATIVE BROWN: Thank you very much.

SENATOR COLLINS: Representative Pearson.

REPRESENTATIVE PEARSON: I'd like to ask you a question, Mr. Tureen, while you're up there. Yesterday and the day before I went through the Bill page by page and I have a few for you and a few for other people. One of the questions I'd like to ask you is, in your opinion, if this is enacted by the Maine Legislature, does this give a State and Federal recognition to the Houlton Band of Maliseet Indians as a Maine Tribe?

MR. TUREEN: Well, it clearly gives Federal recognition to the Houlton Band. That is one of the conditions upon which the Houlton Band participated. It's been one of their objections for many years. They've been denied services and generally cut out of the assistance that by law they should have been receiving and this Legislation clearly would give them Federal recognition for purposes of Federal benefits.

REPRESENTATIVE PEARSON: Does it also give them State recognition?

MR. TUREEN: State recognition won't have any particular significance. If the question is will it oblige the State to provide particular services to them other than free hunting and fishing licenses which they currently get, I think the answer is no.

REPRESENTATIVE PEARSON: I'd like to ask you one more question. You may want to answer it or Mr. Polchies may want to answer it. On the Penobscot Tribe and I believe it's also true of the Passamaquoddy Tribe, there is a census taken by name of people who are qualified. In order to be qualified to be on the census, you must be one-quarter Indian. Is there

such a census in Houlton Band of Maliseets?

MR. TUREEN: I'm certain that there is and Mr. Polchies can answer that question. Is he here? Perhaps Counsel for the Houlton Band, Reed Chambers, from Washington, D.C., can answer that question.

SENATOR COLLINS: Mr. Chambers.

MR. CHAMBERS: Mr. Chairman, my name is Reed Chambers. I'm the attorney for the Houlton Band. Mr. Polchies is temporarily absent from the room and perhaps I can speak to that. There is a--

SENATOR COLLINS: Lift the microphone just a little.

MR. CHAMBERS: Alright. Yes, there is a roll of the Houlton Band of Maliseet. The Houlton Band of Maliseet is not formally recognized by the State in the same sense that the other two Tribes are, although it has received certain benefits from the State and certain exemptions such as free hunting and fishing licenses, exemptions from poll taxes, when you had poll taxes, and things like that. The answer to the question is there is a roll and there is a quarter blood requirement for membership.

REPRESENTATIVE PEARSON: I'd like to ask you one further question, how do you get on the roll--what other criteria is there besides being one-quarter Maliseet to be on the Houlton Band roll?

MR. CHAMBERS: The other requirement is that you be a member of the Community or Band. In other words, that you have lived there for a substantial number of years and participate in Community or Tribal activities. The Houlton Band is essentially the lineal descendants of the Maliseet hunting families that occupied aboriginally the territory of the St. John Watershed and about a hundred years ago, those families settled in Houlton and have basically lived there ever since. Some people have come in and

married in and, of course, some people have left, but the answer is that the Community has recognized certain people who have been there for a long continued period of time as members. They participate in Tribal activities.

REPRESENTATIVE PEARSON: Would people who live on the reserve in Perth, New Brunswick be on the census list for the Houlton Band of Maliseet Indians?

MR. CHAMBERS: People who live in Perth, New Brunswick would be enrolled in the Maliseet Band there. Now people from Perth, New Brunswick might leave the reserve in New Brunswick, come marry into the Houlton Band or live in Houlton for a substantial period of time and then become members of the Houlton Band and cease to be members of the New Brunswick Band.

REPRESENTATIVE PEARSON: Do they have to be adopted into the Band in order to become members of that band?

MR. CHAMBERS: Well, Representative Pearson, there are no--I mean the Band does not have a formal constitution or a formal enrollment ordinance. It's a recognition by traditional Indian methods that takes place and essentially they would have to live there for a substantial period of time and participate in community and Tribal activities and be a quarter blood or more Indian blood. I should add that most members of the Houlton Band of Maliseets are more than half degree Maliseet Indian blood and many are full bloods.

REPRESENTATIVE PEARSON: I just want to pursue it a little further. You say traditional Indian methods, I understand that in the Penobscot Tribe the traditional Indian method is adoption by the Tribe

through a formal procedure and that's why I asked the question. There is no such procedure in the Houlton Band of Maliseets, is that correct?

MR. CHAMBERS: No, Sir, there's no formal written procedure. It's a community recognition.

REPRESENTATIVE PEARSON: Thank you. I'd like to ask Attorney General Cohen or John Patterson some questions. I went through the Bill by pages, Dick, and I wanted to ask you a couple of questions. On Page 6, if you have the Bill in front of you, in the Section on Page 6 that talks about, I guess you'd call it Eminent Domain Procedures. If a utility, for example, wanted to construct a right of way across reservation property, for example, one of the Islands in the current Indian Reservation, they could do that if they could prove that there wasn't any other way to do it, is that correct?

ATTORNEY GENERAL COHEN: That's correct.

REPRESENTATIVE PEARSON: And if they had to do that, there must be a equal amount of land of an equal value found for them that would be attached to the reservation and become part of the reserve, is that correct?

ATTORNEY GENERAL COHEN: Yes.

REPRESENTATIVE PEARSON: Now, my question is, would that require the approval of the State? In other words, your reservation could become somewhat fluid in that type of a situation. If, for example, you ran a power line or a right of way or a bridge across an island and you found some land on the mainland to now make part of the reservation, would you require approval of that town and of the State in order to do that or does--can just a private landowner selling that land determine the

confines of the reservation?

ATTORNEY GENERAL COHEN: Well, I'll let Mr. Patterson briefly comment on that.

MR. PATTERSON: You have to read all the various sub-sections of this section together and I should add, there may very well be some difference of view to the interpretation of this provision. The scheme contemplates that with respect to a public utility, the Public Utilities Commission would have to make the judgment as to whether or not there was no feasible alternative--reasonably feasible alternative to the taking of land within a reservation. If it decided there was no reasonably feasible alternative, it could authorize the taking but the utility would have to find a compensatory piece at the option of the Tribe. The Tribe could accept the money or if they would rather, they could demand a compensatory piece of land. That compensatory piece of land would have to be of equal value and would have to be contiguous to the reservation and as nearly as possible adjacent to the parcel that was taken. That piece of land would be automatically included within the reservation without further approval of the State.

REPRESENTATIVE PEARSON: In other words, the State would have no say over whether that land was going to be part of the reservation or not?

MR. PATTERSON: That's right. Sub-section 6 on the top Page 7, however, makes a distinction between when approval of the State is required and when approval of municipalities is required and it makes a distinction between approval of the State and approval of municipalities.

REPRESENTATIVE PEARSON: Sub-section 6 did you say?

MR. PATTERSON: I beg you pardon, Sub-section 5 at the top of Page 7.

REPRESENTATIVE PEARSON: Attorney General Patterson, I'd like to also ask you a question on that same Sub-section. What is a village?

MR. PATTERSON: Thank you for elevating me to Attorney General.

REPRESENTATIVE PEARSON: Deputy Attorney General John Patterson.

MR. PATTERSON: There are a few villages throughout the State. They are an unusual form of municipal corporation that exists in a few areas of the State. I think there was Ogunquit Village, Wells Village, they're not a very common municipal kind of corporation.

REPRESENTATIVE PEARSON: Okay. Hang on just a minute. On Page 8, dealing with ordinances, if I can find it, about half way down where it says, "Such ordinances shall be equally applicable, on a non-discriminatory basis, to all persons regardless of whether such a person is a member of the respective tribe or nation provided, however," and then it goes on to say that it's all going to be non-discriminatory except that special provisions for sustenance of Indians can be enacted. Isn't that a contradiction in terms.

MR. PATTERSON: No, the contemplation was that to the extent there's a difference in the application of hunting or fishing rights between Indians and non-Indians, that difference can only be justified on the basis of permitting Indians to hunt or fish for their own sustenance. Currently under Maine Law, the Indians can hunt and fish on their existing reservation for their own sustenance without regulation of the State. That's a right which the State gave to the Maine Indians on their reservations a number of years ago and the contemplation of this draft was to keep in

place that same kind of right and provide that the Indians could continue to sustenance hunt and fish and that that would provide a legitimate basis for distinction between Indian and non-Indian hunting and fishing.

REPRESENTATIVE PEARSON: Page 12. I'll yield if I've taken too much time. I'll try to make them quick. Part E, Page 12, Domestic Relations. This deals with the jurisdiction of Courts and so forth. How would an Indian-non-Indian domestic relations problem be dealt with?

ATTORNEY GENERAL COHEN: Under that provision, both the parties would have to be Indians and both would have to reside on the reservation for applicability.

REPRESENTATIVE PEARSON: Fine, thank you. Let's see, Page 12, what happens if a Tribe decides not to exercise its authority on civil matters, which this says it can opt to do or not to do and then changes its mind later on? Can it do that? Let's say, for example, they say, well, we don't want to run the civil matters of the--we'd rather not do that right now but then ten years down the road they change their mind and decide they want to. Is that permissible?

ATTORNEY GENERAL COHEN: Again, we're talking about form jurisdiction here verses substantive law, the Maine Laws would apply anyway so we're just talking about what the form is and--

REPRESENTATIVE PEARSON: That's right.

ATTORNEY GENERAL COHEN: --it could happen, it's my understanding, there could be any situation in that very limited sphere. We don't feel that that is any type of disruption and Maine Law would govern under any circumstance.

REPRESENTATIVE PEARSON: If the Indian Territory is going to

be treated somewhat like a municipality, a creating of—somebody made the remark of two new municipalities, will all non-Indians in those new municipalities be able to vote in their municipal elections; that is, for the Tribal Officials?

ATTORNEY GENERAL COHEN: No, not if they live on the land, what I would refer to as newly acquired land, whatever that be, non-Indians unless with the authorization of the Tribe or the Tribal Government would participate in that.

REPRESENTATIVE PEARSON: Thank you. I only have one more question and that is of Mr. Perkins. Mr. Perkins, I have in front of me two letters, one from Dead River and one from Great Northern Nekoosa Corporation, dealing with lease lands of people who have cottages on ponds. That's a concern I have in this Bill and in my area. I want to make sure that I understand this clearly. Nobody was forced in the paper companies to make options on any particular piece of land, is that correct? In other words, no paper company or any individual was told you must give Indians the option upon any particular piece of land?

MR. PERKINS: That's correct.

REPRESENTATIVE PEARSON: Okay. And the Great Northern and Dead River has said to the people who hold leases, we'll sell you the land which you now lease, is that correct?

MR. PERKINS: That's correct.

REPRESENTATIVE PEARSON: Have the other paper companies, Diamond in particular, also indicated that they would do that?

MR. PERKINS: To my knowledge, the state of communication amongst the other landowners is incomplete and the reason for that is that there

has been continuing discussion of whether certain lands would be in or out but I say it's incomplete because I know that to the extent camp owners have inquired, they have been responded to. From my conversations with the various landowners, to the best of my knowledge, they all intend to handle it along those lines. Now, just as soon as the acreages are fully resolved, I expect that such communications will go forward. I brought you the Dead River and Great Northern ones as examples. Those are two of the larger parcels of land, have been defined for some time and, thus, those programs are in force.

REPRESENTATIVE PEARSON: Mr. Perkins, are you saying to me that the Diamond Corporation is going to tell people who currently have leases, we will give you a chance to buy your property?

MR. PERKINS: That is my understanding. I'd have to check it with them.

REPRESENTATIVE PEARSON: Would you please do that.

MR. PERKINS: Certainly.

REPRESENTATIVE PEARSON: Could you tell me that this afternoon?

MR. PERKINS: Yes.

REPRESENTATIVE PEARSON: Thank you.

SENATOR COLLINS: Mr. Violette.

REPRESENTATIVE VIOLETTE: No questions.

SENATOR COLLINS: Mrs. Post. Mr. Strout, do you have questions?

REPRESENTATIVE STROUT: Attorney General Cohen, please. In the organized municipalities, if there is a possibility some land is going to be taken from this organized municipality, in lieu of taxes on

Page 11, it says that revenue will be reimbursed in lieu of taxes. Will that municipality receive revenue on the same basis as the tax that they assess at the local level and, further, if this tax increases, will the revenue in lieu of taxes increase on the same basis?

ATTORNEY GENERAL COHEN: Yes, if we could just respond in a little different fashion but hopefully to address what you are talking about, you're not referring at all now to a eminent domain situation?

REPRESENTATIVE STROUT: No.

ATTORNEY GENERAL COHEN: Right, okay.

MR. PATTERSON: If the Tribes buy any land in any organized municipality, city, town, village or plantation, they will pay all the taxes and their legal status and the status of their land will be exactly the same as your land. So the question is not really--

REPRESENTATIVE STROUT: On-going it will be the same?

MR. PATTERSON: Yes. That land will have no different legal status than anybody else's land. The only different legal status that will exist under this scheme is with land they acquire in unorganized territories of the State on the areas marked on those maps.

REPRESENTATIVE STROUT: One other question is on the State Tribal Commission. On the amount that I see here, the Commission members shall be paid \$75.00 per day. Does that mean that the State is obligated to pay for all the Commission members?

ATTORNEY GENERAL COHEN: As far as the expenses?

REPRESENTATIVE STROUT: Yes.

ATTORNEY GENERAL COHEN: Yes, that's correct. There's been an estimation, we've talked with the Governor about this, but we're talking

approximately \$3,000.00 per year.

REPRESENTATIVE STROUT: \$3,000.00 per year?

ATTORNEY GENERAL COHEN: Yes, that's an estimate. Whether it goes that high, I'm not sure.

REPRESENTATIVE STROUT: Of course, that would depend on the meetings that were held, right?

ATTORNEY GENERAL COHEN: It would depend on how many meetings but there has been discussion and thought about that and the best estimate is approximately \$3,000.00 per year.

REPRESENTATIVE STROUT: But the State would be obligated to pay for the four Indian members.

ATTORNEY GENERAL COHEN: That's correct.

SENATOR COLLINS: At this time, we're going to take a one-half hour lunch break and we will resume promptly at 1:00.

[LUNCH RECESS]

SENATOR COLLINS: Let's resume our hearing. I'd appreciate your taking seats. We've appreciated the fine cooperation of everyone here in making things go in a very orderly manner.

We're going to take just a couple of items out of order because of plane schedules and at this time I will invite Mr. James Barresi of Presque Isle to speak briefly.

MR. BARRESI: Thank you Senator Collins, Representative Post, Members of the Joint Select Committee. My name is Jim Barresi, I'm Executive Director of the Northern Maine Regional Planning Commission at Caribou, I reside at Castle Hill. I appreciate the time given for airplane scheduling, I thank you very much.

My remarks will be brief and they basically build off of the following remark that the time for Settlement has come. I make no comment today on who is the winner or who is the loser, the State or the Tribes, but there are many possible problems if there is no Settlement-- two basically. Economic harm--title problems, community bond issuance problems, municipal facilities, finance problems as to Federal Grants and Loans and a cloud to the economic development and the job development of the people of Northern Maine and I believe the people of Maine. For social harms, one of the basic ones that you have I know already heard but is very real in our Country for the citizens who have for many generations had the land of Maine cleared, improved and nurtured, field and farm, and now see questions as to their ownership. There is a final benefit that I don't think has really been mentioned that I have heard of yet and that's when you are in a position like ours, we run among our other duties an economic development that is funded by

the United States Department of Commerce. The United States Department of Commerce, through the Economic Development Administration, has some special funding for landed--landed Indian--recognized Indian Tribes. The Passamaquoddy and the Southern Tribes in the State, the Washington County and Penobscot County Tribes, because they had land, have been eligible for these Federal benefits. The Maliseet Band at Houlton really has not been eligible because they did not have a land base. This land base would, in fact, make them eligible and it would give the Economic Development District that I operate a bases on which to deliver services vis-a-vis the Economic Development Administration and the United States Department of Congress to this group, which would be beneficial not only to the Houlton Group but also for Northern Maine as a whole.

The questions as to other development processes that are taking place in the wildlands of Maine and on the water courses of Maine both mining and hydro-development would also be cleared. In my own case, we have been working on some Federal projects with the United States Department of the Interior, recreation projects--not large projects and not expensive projects. These projects in some cases have been held in abeyance because of the uncertainty in the Land Claim situation. We believe that a time for Settlement has come. Thank you, Sir.

SENATOR COLLINS: Thank you. Representative Walter Birt.

REPRESENTATIVE BIRT: Thank you Senator Collins. Senator Collins and Representative Post, I guess I'm in the same situation that I have to fly up North soon. Members of the Joint Special Committee on Indian Land Case, I'm Representative Walter Birt of East Millinocket.

However, I'm not speaking in that capacity today but as a Citizen and Administrative Assistant to the Board of Selectmen in East Millinocket.

The Board of Selectmen at their regular Tuesday meeting this week passed a resolution supporting this Indian Land Claims Settlement. Briefly, I'd like to discuss a single incident which happened in the next Community, Medway, in which I became involved in. In the Spring of 1976, the Town of Medway started construction of a new school house. The contractor was a small contractor from Northern Aroostook County. In the Fall when payments began to come due to the contractor for work performed, the school went to the Maine Bond Bank. The Bond Bank on advice from Ropes & Gray of Boston indicated to the Town that, like many others, the Town was into the area affected by the Indian Lands suit and that bonding was not available. The contractor operating with limited resources could see himself losing all that he had and this was a concern he personally expressed to me. After conversation with the Governor, a loan of \$30,500 was obtained from the Government Council. David Means of Bangor Financing Firm negotiated with the Town of Medway, a \$100,000 loan with more permanent financing--until more permanent financing could be found. Several Maine Banks eventually purchased the bonds and as of this date, the bonds are still held by these banks.

This is the type of situation which is an excellent example of what I fear could happen again and again if this Settlement is not accepted by both the Maine Legislature and the Congress. If we cannot find some agreement area at this time, I fear that long, extensive, costly litigation will ensue that could be extremely destructive to my section of the State.

It could ultimately result, many of us fear, in tying up the ability to borrow money, purchase or sale of homes or many of the areas that require financing. I hope this Committee today will be able to come up with a report whereby this Bill can be given success with passage in the Maine Legislature. Thank you.

SENATOR COLLINS: Thank you, Mr. Birt. We want to hear now for awhile from opponents to the proposed legislation. I have a list of people who have signed up requesting that they speak. I have a list of 21 persons. Several of these persons have designated that their topic is on the same issue, that of sovereignty. We may have to limit time in some of these matters but I think we'll start off inviting representatives of the Penobscot Nation who wish to speak in opposition. To commence at this time, if there is one among you that you regard as the lead speaker, we can allocate at least five minutes to that speaker and then, perhaps, lesser time to following speakers. Now, those who have signed up wishing to speak as members of the Penobscot Nation in opposition include, Sam Sapiel, Francine Leevey, Francine Murphy, Mike Ostrangl, Alberto Francis, Gary Attean, Eunice Crowley, Stan Neptune, Ann Pardello, Neil Phillips and I believe that's it from the Penobscot Nation. Is there one among you who wants to lead off as lead speaker?

MR. MITCHELL: Mr. Chairman, my name is Dana Mitchell.

SENATOR COLLINS: Dana Mitchell. Thank you. Please go ahead.

MR. MITCHELL: Well, I find it kind of unusual at this time to find that the Penobscot Nation and representatives and their people are restricted to five-minutes time limit in delivery when the State and

other people have had unlimited time to speak on any issue. I'd like to enter that in at this time. Today when the Indian Leaders, State and Federal Officials and Paper Company Attorneys and Representatives are close to an out-of-Court Settlement under the direct control of NARF Attorney, Tom Tureen, who is generally funded by private as well as non-governmental grants, it has been shown that Tom Tureen and NARF are being supported by the Federal Government at an on-going rate of a million dollars plus annually by the Department of HEW Office of Human Development and also from the Department of BIA, which has been shown that NARF has been receiving annually in the past years at the same rate of a million dollars plus annually to press these land claims issues. It would seem that the Indian People have always been informed that NARF was not receiving any Federal money, why then were they not told that NARF was receiving money from the Federal Government annually? One would question an attorney they had representing them on such a legal matter whose pay is coming from the pockets of your own adversary. It would seem that the canons of ethics require that a lawyer fully disclose payment made by others, especially when the other party is in the position to exert any political, social or economic pressure on the lawyer as well as the client. Whereas he has kept the source of their funds under wraps or has only disclosed this to a very few insiders, has committed serious breach of ethics, yet more importantly, how would the people like it if they knew their lawyer was mainly paid by their adversaries--the United States. Only the foolish could accept this.

Two or three years ago, NARF vigorously denied reports that that money was being used from the Federal Government to press these land claims

issues. It would question whose sovereignty NARF and Tom Tureen are protecting and, obviously, today as by the record, that they are protecting the State of Maine's sovereignty, not ours. Today when the Indian Nations of Maine and their Leaders are being questioned for reasons of mismanagement of Federal Funds and Loans, and are without any money from the practice of mismanagement and also the State Governor, Joseph Brennan, has not included in his new budget to the State Legislature any money for services for Indian People of Maine. Plus, there's denial of certain services and protection by the Federal Government as what is going on here today. It has been known that a Tribal Corporation, namely PI, has been assessed by the Internal Revenue Service as well as Tribal Officials for repayment of SBA Loans where they had defaulted payment. These same people, among others, have been directly responsible as Board of Directors of this Tribal Corporation. They are responsible for repayment. Also they are responsible to the people of the Penobscot Nation for over \$500,000 that the Board of Directors borrowed from the Tribe. These people are working under the control of the Tribal Governor. It should also be noted that other Tribal Leaders who are in severe financial troubles as well as other Tribal Representatives, who are making political concessions for their own benefit, are involved in this issue. It would stand to reason that all of these people, Tom Tureen, NARF, Federal Government and the State Government and Indian Representatives are working hard at this time to reach an out-of-Court Settlement. It is not only that the Indian People are not informed or protected by our Leaders legally, socially, economically, Indian Leaders are working with the full support of the Federal and State Governments to sell Indians out of their

lands and rights at the expense of Indian People. It would seem that some leaders--Indian Leaders are using this Land Claims Issue to try and cover up their many financial problems, legal problems and that the Federal and State Governments are working with them. It would seem that based upon the varied concerns and responsibilities to the Indian People, that these people had been empowered to protect. One would question whose interests are they protecting or, worse yet, exploiting.

Today we have prepared a statement in opposition of the proposed Settlement of the Indian Land Claims. Today the war is still being fought with the Indian People. It is still being done by using Indian People to destroy Indian People and to cause Indian People to totally blend into this melting pot of American People. Today the Indian People face many issues which are causing them to disappear. Today here I find that we are being struck away by the stroke of a pen, by a body of State and Federal Government People whose only interest is to justify their self right or as we look at it, as racist attitudes. I have to comment at this point about Mr. Cohen's comment that why are people of Maine being forced to deal with an issue that we created 200 years ago. I'd like to remind Mr. Cohen that his own people are exercising claims on land that have taken place over 2,000 years ago I don't think this thing is any more outstanding.

The fear that these non-Indian People have toward Indian People is being shown by the way these Settlement Bills are stating. Why is it that these same very racist people, who every day exploit the working persons, are also afraid of Indian people being self dependant, socially, economically, or better yet, politically. By making the Indian People of

Maine come under State and Federal Laws, or lower yet, a municipality, which isn't much for a sovereign people. It still causes the Indian People to be totally dependant upon the State and Federal Government for everything and they will never be able to be the people, who today, could have the right to be sovereign people. Today without any control or restrictions being placed by an illegal State Government of Maine as they stand today, because this is how we look at your government, these Indian Communities being forced to negotiate with the State are doing nothing but recognizing these legal governments; yet, we end up with nothing. The State does not have to contribute anything for the many years of exploiting the land of the Indian People. Today when the people are all aware and concerned with human rights, where are the human rights for the Indian People? We have no human rights. We are in the way of the greed of big business as well as the greed and corruption of State and Federal Government. They do not practice what they put to law. They make sure that if one is to exercise these rights, especially Indian People, the law does not apply. Total denial of our human rights under the law is a clear cut intent on genocide of the Indian People by the State and Federal Government. Here today there is this public hearing on these prepared Bills which have no guarantee that we will be getting land or money. One thing is certain, that we will no longer be a sovereign people and it's pretty obvious as to the Bills that are in front of you that it does not have anything to do with land. It has only to do with our rights. Our people have asked as well as mandated our negotiating teams that before anything is to be final, it would be brought back to the people at our general meeting. This has not happened.

When the people continually ask for information in regards to the negotiating process and what is taking place, none was received. The Penobscot Tribal Governor has always participated in the negotiating process. The Penobscot Indian Representative has also been a full-time member of this negotiating team. Today these Bills are here before you for consideration yet our people have had to consider these Bills without any in-depth legal understanding in only several days. Our referendum vote which was called by the Tribal Governor and Counsels was an illegal referendum. A general meeting of the people is where it would be decided where and how these issues are approved or disapproved. By the time the notices were received, there were only four days to consider it, less days for some people to consider it because of the mailing. The ballot stated that this is for final approval, yet Tom Tureen had stated in a hearing held on March 14, 1980, on an injunction notice for a temporary restraining order to block this referendum issue, he stated that this is an advisory referendum. Advisory to whom may I ask? This Settlement Offer, the people had no say into it. They could not offer any changes or make any changes to these Bills. What is the purpose of negotiating if one cannot negotiate. This is a very one-sided deal. Our attorney is not on the side of the Indian People. We believe he must have been offered a top government job to get these Bills passed by the Indian People. As it stands, he is already being paid by the Federal Government. It is stated in our laws that any Legislative material going to the Legislature has to be approved by the people at a general meeting. This was never done. Our counsel approved this at

a meeting on March 13, 1980, which is illegal. For they cannot approve this issue until the people have approved it. The referendum vote took place on March 15, 1980. There were many members of our nation who did not receive this information, let alone receive a ballot to vote. So how can this be a vote of all the people? This whole process of where these Bills are today is illegal. If this State Legislature approves these Bills, they are doing so illegally and without due process of law for the Indian People. We have even petitioned the Governor of the Penobscot Nation to bring this issue to a general meeting also to seek more time to consider these Bills before approving them. He has not allowed any of these requests to happen. The Penobscot Governor has used our elders in consideration of these Bills by promising them that they would possibly receive over \$200 a month; yet, several people have used different methods to try and reach that figure, yet based upon the number of people eligible, the figure is nowhere near that. I am afraid it would be much less. He has also indicated in the notice that was sent to all of the people with the Bill that we would lose everything, Federal recognition, services, and everything else. I believe that this is a very high-pressure tactic used by people, especially Indian People, to do wrong to the Indian People. Myself and others have requested a second legal opinion from the Indian Law Resource Center in Washington, D.C., Mr. Robert T. Colter, Executive Director. He has supplied us with an in-depth, somewhat, interpretation of the Bills and I'm afraid that based upon the context of this that it would totally do away with all of our sovereign rights and the process being that we would end up losing everything. If the Tribal Governor and the Counsel are allowed to bypass the procedure

of bringing an issue of this magnitude before the Tribe at a duly called general meeting, then what is to prevent them from bypassing the Tribe on other issues in the near future? If we are talking \$13.5 million per Tribe that will be held in trust by the Federal Government, we do not have any control over what they do. They will have full control as we find in the Bill. There is no guarantee of lands. There is no guarantee of money to be paid to us but, yet, one thing is certain--our rights are pretty well defined as to who we will be. I'd like to at this time present this package with the Tribal Court Memo on the hearing for the temporary injunction order as evidence; that on Page 8 in here, it states that this was an advisory referendum; our people were not notified that this was an advisory referendum; the ballot also indicates that this was for a final vote of approval but yet it stated that this is an advisory referendum. I'd also like to include the referendum vote notice that was sent out to all people, forcing this into a forced-tactic type thing so that these issues could be settled rather quickly through the Indian people and with the promise of money. Also, I'd like to include part of the Section of our Blue Book, this is pertaining to the laws of the Indian People of Maine. Under Section 4793, in there states that we will conduct this type of Legislative business at a general meeting. I'd also like to present in evidence to you also a copy of the contract and other supportive information that shows that NARF is receiving their money from the Federal Government and also a copy of the petition where we have petitioned our Governor for a general meeting to bring this issue back to the people.

I have just several more comments to make before I turn this over

to some other people. You talk about sovereignty of the State Government. Well, I, myself, have been pressing issues through your Court Systems and I can speak from experience that this is certainly not within the interests of the Indian People and my sovereignty isn't respected or protected by State Law.

The Trade and Intercourse Act that everybody talks about. It does apply to Eastern Indians because if one would check the time in history, you would find out that basically the issues that they were facing at that time was with just Eastern Indians only. I feel that this is a very gross misrepresentation and dealing to the Indian People and I think that from my own personal observations and and dealings and understanding of this whole issue, that this is one of the biggest mistakes that will ever be done to the Indian People and I think that you people are trying to work within the best interests of who you are to represent but you are dealing with an issue here that is totally and emphatically going to destroy the Indian People of Maine and their culture. I'd like to say that I don't believe that Mr. Cohen or Mr. Brennan or the Chairman or any of you people can give me the right to be a first class citizen. I have that right. We were here before you people were ever hear and I think it's imperative that you understand that and the quicker that is understood within the proper perspectives, that you will understand that this is our land and it should be up to us to decide how we should be governed or what land should be taken or if all land should be taken. There is more involved here than what is presented to you people, not only from history but from reality and I think that this issue should be considered within a proper perspective and not from a biased opinion. Thank you.

SENATOR COLLINS: Thank you, Mr. Mitchell. Are there others

from your group who wish to speak?

MR. SAPIEL: My name is Sam Sapiel. I'm from the Penobscot Reservation. I work in Boston at the Boston Indian Council and the things I'd like to talk about is about our Indian Sovereignty down through the years. We've always had this sovereignty but we've always been governed by the Government and the State Government and they have taken all the things away from our people as hunting and fishing, our livelihood that we depend on and we need these things to continue our way of life and this package deal that I see in front of us today is a hurry-up and a--I'd say one of the big land swindles in United States history today. If they can put things over on us like they put things over on the citizens of Maine--they talk about people getting together so they can unify each other so we can live in peace but this thing here is going to put a pretty big dent in our lifestyle and in your lifestyle because it's not going to unify the people together, it's going to separate them.

I'd like to comment on something that Mr. Sinclair said this morning about the Mashpee Case. They got their school. They got a new municipal building, fire department, police department, a building so that they could have their meetings and everything. Brand new buildings and still the land claim thing was in progress but they wasn't talking about land claim, they were talking about them being a Tribe, do they constitute a Tribe. But we have more going for us here as Indian People of Penobscots and Passamaquoddys because we never became a township. We've always carried on our traditions. The Indians ways the way they are supposed to be. The Indian people are not supposed to

sell their land. They're not supposed to get money for their lands. So as I see it on this package deal, we are selling our lands for 80. some billion dollars--million dollars and then we have to turn around and get this money, then we have to turn around and buy the land back. This is not a land claim thing. It's just a complete sell out--get rid of our lands and get rid of our sovereignty like we have before. The United States talked about sovereignty. They didn't know nothing about sovereignty. The State Government talked about sovereignty. They don't know nothing about sovereignty. They got their sovereignty from the Indian People that were here before. You talk about 200 years, this land claim shouldn't come to effect. We inherited it from our people coming down like you have inherited it from your people coming down. You talk about getting out and working and doing this--we've never had that chance and we never will so we have to depend on our livelihood for hunting and fishing and getting out and working in our culture the way we should. If we lose this, it's just going to bring disunity, not only to the Indian People but it will include the white people too. So I know they're talking about jobs, this money is going to create jobs, it is going to create this, it's going to create that. It's not going to create nothing but trouble. Money always does that. That creates trouble. That's why the Indian People are the caretakers of this land and they should maintain that but they don't because money is in their eyes. All they can see is dollar signs and money is what talks today. They're going to build this nine-man commission thing. They're going to have Indian People on there and they're going to say, well, if you want this thing passed, how much money are you going to get so we can help you to get this passed

through. So I just want to say that Indian People are not supposed to be selling their lands and this is what we're doing today for this whole package deal. We're not receiving any lands back. We have to go and buy the lands and this is not the Indian way.

I have another thing I'd like to read here. The kind of tactics that they used to get this referendum passed on the Indian Reservation. A lot of the people have received these packages but they have received them the day of the referendum or after the referendum and what is enclosed here--what is written down here, I don't think my people could come up to these kinds of things and think these things themselves. It would have to come from the other side, has to come from the Government. I'll read what it says here. It says, "find enclosed agreement for final settlement of the Passamaquoddy and Penobscot Land Claims. Agreements have received an endorse of the Passamaquoddy and the Penobscot negotiating teams who have worked for two years and nine months to obtain the best possible Settlement Package. We believe that after numerous meetings with Federal and State Representatives that the enclosed agreements are the best that we can accomplish in the best interests of the Penobscot Nation and other concerned parties. Without ratification of agreement we will be required to resort to Court Action in non-Indian Court. There is a definite and real possibility that either the Courts or the jury will find reasonable reasons to rule against us. If this happens the Claim is finished and we are left with nothing." I'd like to add to that that we started these Land Claims with nothing and if we end up with nothing, at least we won't be sell-outs. The Federal Government recognition that we have received are now benefiting

from--benefiting from may be lost. With ratification as our share of the Settlement, we will receive 150,000 acres of land and \$13.5 million. The Settlement will allow the Nation to work towards becoming better, economically self efficient and not only will we live today to reap the benefits but so our children and theirs' and so on. The Penobscot Nation will not have to look to the future on depending on Government contracts and Government grants. But with the Land Claims money thing, I still say that with the money we have coming in from the Government now, some 2. some odd million dollars, why do I have to leave the Reservation or leave the State of Maine to seek work elsewhere and I've been away from the Reservation 15 or 16 months now and I haven't been able to get a job there. I could work in the CETA Program but you have to be--have to have so much time--I don't know how much time you have to have without work or anything to work on these Programs but I wasn't qualified for that either. I have to seek work elsewhere and I was born and brought up on the Reservation and I know how hard it is because for 49 years we never received anything from the State. The housing was still the same and the State of Maine had this money from the four townships and the interest on that was supposed to come to the Indians but we never received that until probably a year ago or so. So if you people turn down this land claim thing, which you are benefited more than we are, you'd be just as crazy as we are.

I'd like to read one more thing before I finish up here from--we sent this petition to the Governor in the Penobscot Tribe of Indian Island and we requested him to postpone the referendum vote that was scheduled go on March 15, 1980, for some time so that we could understand

what this whole Package thing was and to no avail. We couldn't have it done but this is what we came up with in Boston. We sent this to the Penobscot Governor, it was, "the subject of the referendum is most serious and important in nature as it will determine the future of our Tribe and our culture for many years. The People of the Tribe have not received notice of the terms and conditions of the Proposal from the State of Maine. The People, therefore, are unable to make an intelligent and informed decision on the Proposal and are unwilling to support a Proposal they do not understand to be in the best interest. The Penobscot Ordinance requires at least seven days notice of the contents of the Legislature Proposal and this Law would be violated if the referendum is not postponed." I took a survey of off-reservation Indians after they had these workshops in Boston and Connecticut and I asked the people about what they thought of the things and they said they didn't give us nothing. We believed in them but after they read the contents of the Proposal, they were willing to sign their names on the petition to go against this Land Claims Proposal. That's all I have to say. Thank you.

SENATOR COLLINS: Thank you, Mr. Sapiel. I wonder if you would indicate how many additional members of the Penobscot Nation wish to speak? Seven, alright, I'm going to have to limit you to about two minutes each. Go ahead, please.

MS. CROWLY: Ladies and Gentlemen, Chairman. I am a full blooded member of the Penobscot Nation.

SENATOR COLLINS: Would you give us your name, please?

MS. CROWLY: My name is Eunice Crowley. I disagreed with this

Package Deal because it goes against all our rights as a sovereign nation. I am a citizen. You are not conferring the State of Maine nor the United States the title of being a first class citizen because I was born one here in the United States. If we go through with this Package Deal, we are selling all our rights and future generations down the way. Because what you do have in that Package Deal is not to our advantage. It's to the State of Maine's advantage and it's also to the advantage of the United States because in all these years they have been trying to terminate Indians one way or another and this Land Claim, if this goes through, this is the precedent, you know, I know and the People know, that will go against any other Land Claim and they will get their way finally and the Indian Nations all over the United States will be terminated and we will be what you so nicely call us in your ways--paupers, because that is what you considered us from the very beginning. When we have to beg for money that's allocated, when we have to sell our rights down the line for Federal Grants, you are making paupers and beggars out of us and we are losing our rights and I hope and pray that the Legislation will not pass this. It will give us ample time to go through this Package again. We were not prepared. That is all I have to say.

SENATOR COLLINS: Thank you, Eunice Crowley.

MS. PARDELLO: My name is Ann Pardello and I am also a Penobscot Indian and I also would like to speak about the Bill, the Package as we call it. The Package, if it had the merits that they say it has, then it should stand on its own merits. Why are they rushing it, why did they rush it through the Indian People and why are they rushing it through you

people on this Committee. Would this public hearing be held today if the news media did not get the public first? Would it? I don't believe so. We only had a few days to read that package. We're not lawyers but we're people that have common sense. We know when we're getting snowed and this year is election year and we Indians do not want to be used as an election year. We don't want to be hurried up and rush this through State Legislation so it can be put through June 1, through Congress. We don't want to be used that way. Was the State of Maine's Statehood rushed that fast? Maine are conservative people at least we're supposed to be conservative people. Maine is behind in years to the other part of the world, or the State or the Nation, not because they want to be but because they take time to think things out. Well, we are part of the State of Maine as Penobscots. We want the time to think this Package out for all of our people. Brennan's speaker had told you that he would give you enough time to look over the Package, yet Cohen came up here and said you get seven days-- seven days to go through this Package because due to Congress. That was, I see you shaking your head, and I know I care about my children and my children's children. We do not want problems between Indians and non-Indians. We want our rights. We're not talking about land or money here, we're talking about our rights. Do you know today as a Tribe they have all the rights but as an Individual Indian member we do not have any rights through Federal and State Courts? We don't have any rights, as an individual member we don't. So please don't take any more rights away from us. Thank you.

SENATOR COLLINS: Thank you.

SIPSIS: My name is Sipsis.

SENATOR COLLINS: Would you speak just a little louder, please.

SIPSIS: My name is Sipsis, I'm a Penobscot woman and I would advise you to vote this Bill down, to further negotiate with the traditional people. There are things of wisdom that our elders have to offer you. We are an ancient people living under the Creator's laws. Our history of our people is a proud one. We have peacefully lived and walked freely and we have allowed you to do this. Our civil and human rights is one of the best on record. We have always acted in one accord, as one mind, as one people and now there are among our people traitors who have sold our rights. If this is passed by your leaders, this will show to the whole world the most blatant violation of civil and human rights of the aboriginal people. If you think you can rewrite your history books or rewrite you Holy Books, you had better start doing it now for you stand to read of guilt, deceit, treachery and fraud and we will always be around to remind you of it. If you think that you own land in Maine, you'd better stop and watch. The timber barons carry away the precious life. You should sue the large landowners for the theft of the life-giving Earth and who have returned nothing to replenish and renourish the Earth. If this Bill gets passed, we will cease to give thanks to the Creator. We will cease to dance in Thanksgiving and we will no longer uphold our corner of the Earth.

I have a telegram here from a brother who could not make it. His name is Francis Nicolai Awasuess. He is for more clearer talks of better Land Claims Agreement among the Mother Earth people. Thank you.

SENATOR COLLINS: Thank you. Next speaker.

MR. NEPTUNE: My name is Stan Neptune, I'm a member of the

Penobscot Nation and what I'd like to speak of is about the same thing that some of the other people have spoken of and that's of the pressure tactics that were used to push these Bills through on all of the Reservations.

At Passamaquoddy Reservation, they called a general meeting. When the people got there, they got their copies of the Bills. Within a half hour, they voted on it. That's not enough time. We had four or five days, the Penobscot People, that's still not enough time. We approached our Governor--well, I don't consider him my Governor. He's a sell-out to the Indian People. He's also a dictator. We asked him for more time to consider these Bills. We walked into his office, a number of people, we asked him if he would call a special Council Meeting so we could air our grievances and tell him--or talk to the Council and ask the Council if we could have more time. We asked for two weeks. He wouldn't give it to us. He said he'd talk to his Council Members. He talked to them, alright, and he told them, he didn't ask them, he told them we're not going to have this meeting because these radicals come walking into my office and demanded a meeting. He's supposed to represent all the People but he don't. There's a certain clique that he represents. The traditional people are not represented by this Governor. We have not been heard. That's why you see so many people here opposing this Settlement and because of all of these illegalities that our so-called Governor has done to the people, we will continue to fight against these Bills. We are looking for a lawyer or lawyers and we're going to fight this thing. We're going to fight the Governor and Council, the elected system. All we asked for was more time and he refused. The State, the Federal Government, they have not negotiated with the sovereign people

of the Penobscot Nation. They've negotiated with a puppet government of the Federal Government and this State cannot pass Legislation over the Penobscot Nation no more than they can pass laws or Legislation over a citizen of Canada, Germany, or any other nation. We are a sovereign people. Also, during the negotiations, Tom Tureen has committed what we would call an act of duress. He has forced the Negotiating Committee to do things his way because of pressure tactics and these also will come out in future lawsuits. There are a number of things that have been left out when they spoke at the workshops. There was a Settlement Agreement--in the Bills it mentions a Settlement Agreement dated, I think it's on the second page of the State Bill. Nobody had seen that Agreement, not even the members of the Negotiating Committee, until maybe the last day of the workshop and the people didn't see a copy of that Settlement Agreement. Some of the Negotiating Committee members told me that they believed that that Settlement Agreement was the two Bills. That's not true. There's a separate Agreement. I have a copy of that. There's also a copy of the Dead River Agreement which was never shown to the people. How many other Agreements are there that the people don't know about? This Settlement Agreement of these Bills gives nothing to the Indian People. It sets up a trust fund. Twelve and a half million per Tribe and the Indians will get the income, whatever that is, off of that per year. So that's not our money. Out of 81 million, 57 million goes to the big landowners and they're the ones that are making out on this deal. The State's making out on this deal because they get the control of the lives of the Indian People. So I don't believe that this State Legislature has the authority--and I know they don't have the authority

to pass Legislation over the sovereign people of the Penobscot Nation or any of the other Abenaki Peoples. I was a member of the Negotiating Committee at the start as an alternate. As an alternate when the negotiations first started, I was able to vote. Then when I gave too much opposition, they made a ruling that only the permanent members would be allowed to vote so that excluded me. Also, during the negotiations when we first started, it was said that anything that was agreed to had to be unanimous. This Settlement Agreement was not unanimously approved of. Sam Sapiel just mentioned in that letter that he wrote out that the Negotiating Committee endorsed that, that's an untruth. One member opposed so it was not the Negotiating Committee which endorsed that. This is not a product of the Negotiating Committee, it's a product of Tom Tureen and the Native American Rights Fund and they are not looking out for the interests of the Indian People. They're looking out for the interests of the Federal Government. So we will continue to fight for our land. The land will always be here and so will the Indian People of the Penobscot Nation. This is not the end of the Land Claims nor is it the end of our struggle for the unalienable rights that are guaranteed to all nations. We will continue to struggle until we win.

SENATOR COLLINS: Thank you, Mr. Neptune. Next speaker. I'm going to ask you if you possibly can to hold it to about two minutes.

MR. ATTEAN: My name is Gary Attean and I am also a native born Penobscot. I am against this Land Claims Settlement Bill as it now stands because my rights as a Penobscot are in danger of being infringed upon in the following areas: such land and property that we now own or share in will clearly be under the jurisdiction of the Secretary of the Interior

of the United States; for example, I would need his permission to sell my lands or property to anyone, Indian or White, even now I need the approval of the Commissioner of Indian Affairs of the State of Maine to sell or trade property. No other citizen to my knowledge with the exception of Indians is under this requirement. Number two, my sovereign rights are being dealt away for the sake of expediency by the Penobscot Tribal Administration without proper presentation to myself or other Tribal Members for approval. I have no faith in the Tribal Administration who is willing to appease the Federal Government and the State Government, who in the past has proven to be very uninterested in my or other Indian Peoples' welfare. If the State of Maine is looking forward to finally accepting me as an equal citizen, able to shoulder my share of responsibility, then the State of Maine should shoulder their share of responsibility in protecting my rights which are in danger if this disagreeable Bill is enacted within the State of Maine. I am distressed now to realize that the future will define all of our roles here today. We will be designated as the oppressors, the oppressed, the dupes and, finally, the betrayers. Thank you.

SENATOR COLLINS: Thank you, Mr. Attean. The next speaker.

MR. OSTRANGLE: My name is Mike Ostrangle and I'm here to talk about why I am against this and I'm against this because this thing was just pushed through. They did not give us no time to really go over the thing. They didn't have the proper lawyers there to help them out understanding it because not even some of the lawyers there totally understood the Land Claims thing and I'm against it also because really we're not going to get anything out of this deal because if this thing

does get passed through Congress, you know, we're not going to get none of the money because it's just going to be in a trust fund, you know, we're not going to see a penny of it but that's beside the point. You know, the land part of this thing, you know, is just totally messed up because why are they just going to let us go buy it? Why can't they just pass it through and let us have it. You know, I think that's, you know, kind of like, you know, the same it was back a long time ago, you know, when they used to, you know, have all these, you know, meetings with the Indians and all these treaty sessions and they would always, you know, get over on these Indians, you know, and that's what I really think is happening right now only that it's not fighting, it's just happening inside of a room, you know, and that's why I'm against it.

SENATOR COLLINS: Thank you.

MS. COTE: My name is Julia Cote, a full blood Penobscot of the Penobscot Nation, living off the Reservation from Bristol, Connecticut. I'm very much opposed to this so-called Package Deal for the simple reason we were never given enough time to consider the Package Deal, to read it through to understand what it was all about. When I attended a meeting in Bristol a short while back, it was stated at the meeting that we were allowed five days of notification for any important meetings pertaining to this. Well, if that's the case, I received my Package in the mail 5:30 the same day of the meeting. The meeting was held at 7:00. That gave me one and half hours notice. To me, that is no notice to go over a deal like that and really try to understand what it's all about. And another thing, I have two children that didn't even--that are of voting age. They didn't even receive a Package. My daughter attended the meeting

and she got a ballot at the meeting. My 21-year old son never got a ballot, never got a Package. We are a Penobscot Nation. If this bogus Package goes through, we won't be a Nation any longer. You'll be taking away everything that's rightfully ours. I don't want anything that's not going to benefit my people. That's all I have to say.

SENATOR COLLINS: Thank you. Next speaker.

MR. PHILLIPS: My name is Neil Phillips and I am a member of the Penobscot Nation. In the past year I have been away from here. I've been going to school out in Albuquerque, New Mexico. I have been trying to keep informed on what's been going on in the Negotiating Committee. I have a brother that's on that Committee. Well, this vote that came up on the Proposed Settlement on March 15th, as I understand it, was an advisory vote, as stated in the suit of Gary Aikens vs. the Governor and Council. If that was an advisory vote, then I believe that that vote is not binding upon the Penobscot Nation. It was not an affirmative vote of the people so you do not have their affirmative vote. I believe that if it is advisory, then I would like to have that vote come back to the Penobscot Nation, all of our people informed with enough time to take this document--if they want to go get private counsel, fine, or get into group sessions to discuss this Proposal. I have asked for this since February of 1978. I have made motions on the floor of our Tribal meetings that have given 14 days' notice. It was approved by a general meeting on June 1978. Immediately the following meeting, another general meetings was called, that question was brought up again by the Governor who in turn made that 14 days 5 days. During the negotiations, a few illegal things were done. In February, 1978, the Proposal that was given to us then was

was taken back to the Negotiating Committee that said you have 60 days in which to act on this. Mr. Tom Turén at that time and close to the 60 days, he gave the United States Government extension. I asked him, did we as a Penobscot Nation give you the right to make that decision? He said, "No." I said, was it illegal? He in turn said, "Well it didn't hurt us." I said was it illegal, did you not come back to us. He said, "Yes, it was illegal." So during all this time these people, this Negotiating Committee, has done many things illegal. They have taken the rights of our people. I was never notified of this meeting. There were four Penobscots in Albuquerque, New Mexico, that were never informed. We never got a ballot. Even if it was an advisory one, we should have at least had the right to express our opinions but we never did. The Administration knew where we were. They knew we were going to school. We got monies from that Tribe, every single week. They had our addresses. But I believe that all of the people who were opposed to this Settlement were left out of the right to express their opinions intentionally because we never had control of the ballots of the people who signed those ballots on the last referendums. I believe and it's my belief and not anybody else's, I'll stand on that, that I believe that they went down through that list and selectively sent those ballots to people that would approve this Package and not to the people that were against it, that do not live here, that are away from this place. We have many members who do not live here that are all the way across this country. I know, I sent a package to Denver with my papers to go to work for the FAA. It took ten days for those papers to go from Albuquerque to Denver. Now do you believe that five days in this Country with today's mail service is

enough time to inform all of our people? I would recommend that this Committee right here vote down this Proposal and recommend to the Penobscot Nation that they in turn return this Proposal to the people to explain it to them and to get an affirmative vote instead of an advisory vote. Thank you.

SENATOR COLLINS: Thank you, Mr. Phillips. Is there another speaker?

MR. NEPTUNE: My name is Martin Neptune. I'm a member of the Penobscot Nation. I won't sit here and try to persuade you to vote the way I know you're going to vote. I even had doubts about coming down here today because I've grown up on the Reservation; I've lived the history of my people; I've seen how the Government operates; I'm very familiar with it; I know where Tom Tureen gets his money from; I know money can corrupt people; I've seen how my people were when I was young and how close they were, how they worked together, how they came in larger groups than we have here to speak against Legislation that would destroy us as a nation. Then the Government started sending funds into the Reservations to our people and as you know, a lot of our people have never had anything—a lot of the older generation hasn't had anything. They've had a hard time getting jobs because of the color of their skin, because of the racist attitudes of people in towns and people in the whole Bangor Area. So when these people started getting two or three hundred dollar paychecks every week in their pockets, people that have never had anything before, it has a lot of influence and I know that is what is pushing this proposal through right now—money. I'm ashamed to say that those people are the Governor and Council of the Penobscot Nation.

I'm not proud of them at all today. I don't even consider them my brothers. When we took our vote, there was 124 Penobscots that opposed this and these are only the people in our immediate area because we didn't have time to inform other people. What I'm saying is that the Penobscot People don't approve of this. Your people have pushed this through. It is your people that are jamming this down our throats. It's your money, it's your big business, it's your lawyers. I was very proud to see 124 oppose that because I was proud to see there's at least 124 Penobscot People left. Like several other people spoke before about the land and its relationship to our people. That is our people. The land is our people. That's what has brought us through and that's what's helped us endure for these last three or four hundred years. Since the first European Boat People came over here and I don't have any illusions like I said about persuading you different but I did want to come here because I wanted to stand here in front of your people and I wanted to stand here and be proud that I'm a Penobscot and that I am opposed to the sell-out of my people. We'll be back.

SENATOR COLLINS: Thank you, Mr. Neptune. We've now heard from ten representatives of the Penobscot Nation. I'm going to now switch and give the Maliseet Tribe an opportunity; and the other Members of the Penobscot Nation that may wish to speak, if you're here later on, there will be further opportunity so I'm not cutting you off but I do feel we should give another Indian Representative an opportunity. Now, the person that I have listed first from the Maliseet Group is Mr. Lumis J. Sappier, Sr. Is he here? Do you wish to speak now?

MR. SAPIER: After her.

SENATOR COLLINS: Alright. And your name?

MS. NICHOLAS: I am Barbara Nicholas from the Maliseet Nation.

SENATOR COLLINS: Would you say your name again, please?

MS. NICHOLAS: Barbara Nicholas.

SENATOR COLLINS: Thank you. Speak right up, please.

MS. NICHOLAS: (Speaks in Indian) I state to you the children of the original Boat People, the welfare of the land has been and always has been the concern of the people--the Native Peoples of North America, and we stand here in opposition of the Land Claims and I am just standing here to back the Penobscot Nation.

SENATOR COLLINS: Thank you. I'd like to request that as many as possible take their seats so there will be an aisle through here for people that are coming and going. If you would, just clear a little space through the middle, please. There are lots of seats if you'd care to be seated. Mr. Lumis Sappier.

MR. SAPPIER: Thank you. My name is Lumis Sappier, Sr. and I am a legal representative of the Maliseet Land Claims Committee. We're going to deal with the maps here and for those of you that haven't picked them up, we suggest that you do. If you look at the--we're going by the latitudes and longitudes of Northern Maine, which is a sovereign territory of the Maliseet Indians. The 46th parallel for those of you who are not too familiar with it, it runs through Patton or south of there and runs easterly direction to the Quebec Border. I'll start by mentioning here, I read at the outset to inform the successor of Don Gellers, naming Tom Tureen, when I first got acquainted with him when a group of lawyers and myself had worked on the Jace Treaty to prepare it for its litigation. At that time

after we had gone through five or six lawyers as well as a couple of us Maliseets, it went for declaratory judgment so at the same time I had informed Mr. Tureen that the Maliseets owned a large tract of land in Northern Maine but at no given time did we give him permission to negotiate a Settlement for us either in part or in whole because we understand today that some 25 or 30 of our people, the Maliseets, in his having acted in this capacity and in his endeavor to present us, in any capacity for that matter, violates our civil rights and the principals of the international law. In the absence of our consent, which also violates the 7th Amendment of the Abenaki Constitution, thus, the parties that have participated in including 30 or 40 Maliseets in the--above the disputed area, above the 46th parallel situated at Houlton, had been--the law had been violated so, thus, the two parties, the people who proposed it and the people whom have accepted, are equally guilty of the violation of this particular law. Now, I totally disagree with the State of Maine being the second party to a Settlement. Mr. Brennan, Joseph Brennan, often times speaks from both sides of his mouth and whom has ridden the crest of the wave to have himself elected on the Land Claims and this is all he cares about. He talks a lot but he does very little but that's not saying very much either for your President, who's playing the role of Ponchios Pilot. He's disbursing his disciples, north, east, south and west but he washes his hands of the whole thing. Now, that's not the way the so-called Democratic System works. So there is a good chance if--now I have to refer you on--I'm not very well prepared here--it's on Page 4 and the title of it is, the Summary of the Proposed Maine Indian Land Claims Settlement. I refer to you on Page 4--

excuse me, I got the wrong one. This is not my fault, you've brought this paperwork upon us kind of unexpectedly. Now, I refer you to the statement of the Attorney General, Dick Cohen--or I should say Richard Cohen--on Page 4, the particular paragraph, is the period after 1833. If you'd like we can--or you can read along with me. If not, I'll read the paragraph and give an answer to it.

The Maliseet Indians do not, so far as we know, look to any particular documents but claim generally that their lands were taken from them to a Settlement by non-Indians. Now, that was done by a lot of White Men speaking with a forked tongue. So I wrote down this as the answer: This is not so. We are claiming our own sovereign territory which is located as we know at the present date as the 46th parallel and everything north of there. It further states that the lands were taken from them through a Settlement by non-Indians. The size of the total area in question has never been precisely defined. Again, we're dealing with a slick tongue. It has--we have been speaking to a deaf ear. So that is one of the reasons why that so far as the Maliseet Indians, the Indian Nations are concerned, there is a good chance this could be taken under international law. But if Carter or Brennan has anything to do with it after that decision is made to our favor, it is a good chance your Governor may fire that judge. He's done it before. Again, I must ask for your tolerance. There's more papers here than Carter has pills. Now, we are going back in again--a couple years ago we launched a suit in the Federal Court to which I was thrown out because I was hatched on the other side of the boundary line which is virtually meaningless so far as the sovereignty nation is concerned so some of the boys here--I

hope they don't feel offended by me referring to them as boys--but they mentioned that the State of Maine so far as they're concerned, they are lily-white. They're not guilty of anything. Then comes the so-called landowners. They will receive the same song. Now, so far as we're concerned at the present time, Carter has opened up a bid of \$81 million for the land--I don't know, somewhere in Maine. Maybe you fellows have a better conception of where that land is located. I certainly don't. We had definitely indicated where the Maliseet Land Claim lies and until such time that is resolved and let the people sit down with us in good faith and leave their snake tongues behind, we may be forced to take this under international law.

SENATOR COLLINS: Our next speaker comes from the County of Hancock, Mr. J. Russell Wiggins.

MR. WIGGINS: Mr. Chairman, Members of the Committee. This hearing, it seems to me, must make a very great impression on anyone. An impression of the complexity and the problems involved in the whole Indian Land Claims situation. I believe the Office of the Attorney General has done a remarkably ingenious, scholarly job of presenting the alternative courses that lie before this Committee and before the Legislature and before the people of the State of Maine. I may say in a prefatory note, however, that I believe the scheduled procedures for the Legislature are entirely too brief, the planned hearings of this Committee entirely too short, considering the importance of the issues that are presented and I believe they are as important as any great issues that have been layed before the Legislature of this State. It is remarkable, it seems to me, that the time you have set aside for deliberation

upon these issues is really not as long as the United States Congress devoted to considering the fate of the Snail Darter and that really the record that you are compiling won't be as considerable as the record the Environmental Protection Committee is compiling on Furbush Lousewort in the Valley of the St. John. I wish that it might be possible to expand these hearings to a very great degree and to defer any action in the Legislature until the hearings have been completed. It is a singular thing really that in all the discussions of this case that has been had in this State, very infrequently has there been any discussion and there hasn't been any such discussion here of the real merits of the Land Claims Case. If it were possible to expand these hearings, I would like to have them roughly divided into two broad considerations. One, a consideration of the history of the Land Claims Case from the very beginning. A history of the whole enterprise from the first disputes over the Land Claims in Maine. As a second category for consideration, I think the Bill of Settlement ought to be broken down and analyzed piece by piece and paragraph by paragraph as a conventional Legislative Committee would analyze a piece of Legislation or an appropriation. It is important to settle this issue. It is important to put to rest the long litigation that has been revolving around the Land Claims Case. It is not so important to settle it or attempt to settle it in a way that leaves unresolved many issues of principle that have long perplexed lawyers and scholars of this State. At the very least, I would like to see the record of this Committee expanded to include, first, an extensive discussion of the merits of the case by the Department of the Attorney General and by Counsel St. Clair setting forth not only their conclusions

as to the chances of the State and the people of Maine defeating the Indian Land Claims but as to portray the reasons upon which those judgments are based so that the Members of this Committee and the Members of the Legislature and the people of Maine on assuring of the evidence can help decide for themselves what the odds are. The odds seem to be very interesting-- at 60-40, I believe the Attorney General puts them. Is that really the odds or does anybody know? It's a matter of judgment after a long protracted study of it. I must say that the Land Claims Case over the last eight years, it seems to me, has involved a very unequal struggle. An unequal struggle between a well-financed, well-endowed, professionally trained core of specialist lawyers confronting year after year new lawyers for the State, amateurs on the issues and the problems of the esoteric field of Indian Law. In every local litigation and in every confrontation of the Department, the experience, the investment, the money and the finance has layed on the side of the Counsel for the Indians. The National American Rights Fund has raised millions of dollars to finance their struggle. The Legislature of Maine has not raised anywhere near as much money as they have already spent. I should hope that on the showing that the Attorney General has made of the options before the State that the Legislature will make one of two decisions--either to resist the Claim and to endow its officers and its legislators and its lawyers and counsel with the funds and the men to fight on an equal basis with those who have been endowed by the Lilly Foundation, the Ford Foundation and the Department of the Interior. That struggle if it is to be carried on ought to be carried on an equal footing and not at the disadvantage of

the lawyers who represent the people and the State of Maine. I have no predictions myself as to the possible outcome of such a struggle. Such inquiries I have been able to make over the last ten years into the merits of this dispute lead me to believe that the Indians lost in 1760 any claim they had to any lands in Maine. Four Indians from the Penobscot Tribe went to Boston and appeared before Governor Pownell and admitted that they had been on the wrong side in 85 years of the French and Indian Wars. They begged their pardons of the British Government and they said that they forfeited their rights to their land and prayed only that they might be given places to hunt and fish in the lands where they resided. At the same time, several Indians from the Passamaquoddy Tribe went to see Governor Lawrence in Halifax and layed a similar acknowledgment before him and asked alike for places to hunt and fish but acknowledged that they had forfeited their rights to land. That did not end this question of their claims to land in this area. In the long correspondence between the Governors of Massachusetts and the Lords of Trade and Commerce in London, the representatives of this colony stated repeatedly that the Indians here had lost the title to their lands and when the Lords of Trade and Commerce proposed in 1764 that something very much like our Indian Intercourse Act be passed in England and imposed upon this colonial area preventing anyone but the Crown from having land transactions with the Indians, Governor Bernard wrote back and said such Legislation is not necessary here. The Indians no longer have any land titles in Maine.

The other very pregnant issue that must come before this Committee

and before the Legislature and not to be addressed by it fully is the status of the Indian Intercourse Act of 1790. I know that there have been a succession of lower Court opinions adverse to the interests and contentions of the State of Maine and the landowners of Maine as to the application of this Law to the Indians in the State of Maine but I find that it a singular thing from 1790 until 1972, the Government of the United States conducted its affairs with the Indians as though these Indians were not Federal Indians and not under the jurisdiction of the Federal Government. Andrew Jackson, when he was discussing the issues of the Cherokee Indians, deplored the fact that the Federal Government was running the affairs of Georgia with its Indians while the State of Maine had complete discretion to deal with its Indians here and after Jackson had inaugurated the removal of the Federal Indian Tribes beyond the Mississippi, Secretary of War, John Calhoun advised him that now all the Indians had been moved that were called Federal Indians and that there were only remnants of Tribes left and he enumerated the Passamaquoddy and the Penobscot Indians of Maine as such remnants of Tribes. Now, I am not a lawyer and I do not know how to resolve these questions of historic policy but I submit that none of these contentions in all of the cases that have been examined or acted upon in the lower Courts have fully examined the historic background of these cases. The long and careful and scholarly study of Ronnie Banks has had apparently no impact upon the Courts that have considered this statute and its effect in New England. So I know that it is a difficult problem and it's hard to sustain optimism in the face of the long history of this contest and I believe that the opinion of the First Circuit Court left wide open by the express and explicit

declaration of Judge Coffin a reconsideration of all of these issues so as they might arise in any litigation over actual land suits.

I am further encouraged and I'm trying to anticipate what the future might be but the fact that there's been no trial in any of these land cases in any Court, no trial in which a live flesh and blood landowner who had had his land in his family for five generations stood before a jury and had themselves told that the man ought to be evicted from his property. There is a different atmosphere. There is a different climate in a courtroom proposing the eviction of a landowner from the esoteric discussions that take place in the chambers of lawyers and in the rooms of scholars and academicians. You have a practical situation and I'm not at all sure that everyone of those cases would be resolved adversely to the interests of the landowners and the citizens of Maine. But I opt not to pretend to be a lawyer and I leave that to the skill of counsel who have spoken here today and I only hope that a fuller discussion of their estimate of the situation may be available to this Committee and available to the Legislature. I must say in closing that I rest my confidence in the future if litigation is decided upon on the basis of the material things we've just mentioned here today or that have been discussed on the hustings. I believe in the Government of the United States. I believe in the Courts of the United States. I believe it is a just Government and I believe the Courts are just Courts and believing that, I cannot believe that 10,000 or hundreds of thousands of the citizens of Maine who have committed no wrong against their fellow citizens are going to be driven from their farms, their fields and their homes and their factories

in a belated redress of grievance in a tardy effort to fix responsibility and vengeance and reprisal upon generations of Americans and Englishmen who went through a long and sanguinary struggle 200 years ago extending nearly over a hundred years of warfare to try to begin the transition here on this savage wilderness into a modern civilized state. Thank you.

SENATOR COLLINS: Thank you, Mr. Wiggins. At this time we would like to hear from James St. Clair. Several Members of the Legislature have urged the Committee to take the opportunity while he is here to have him briefly speak to the merits of the State's case because he will be leaving us for Massachusetts after a little bit now. I recognize James St. Clair, Counsel to the State of Maine.

MR. ST. CLAIR: Thank you, Mr. Chairman and Members of the Committee. Mr. Wiggins has addressed the subject of the merits in, I think, a rather effective way. I happen to know that he has made an in-depth study of the history underlying the Indian Land Claims Case in the State of Maine, as, indeed, any trial of such claims must involve. In the Mashpee case we went back to the, I guess, as early as the 16th Century and traced the evolution of the groups of people that eventually presented themselves to the Court claiming to be the Mashpee Indian Tribe. The same must be done in connection with the trial of the Maine Indian Claim Case if it comes to that. Much of the history that Mr. Wiggins has referred to, in fact, all of the history to which he has referred is consistent with our understanding of the historical evidence that would be available to be presented to the Court on behalf of the State of Maine in defense of these claims. Of course, much, much more detail and much,

much more information in scope would involve the historical background of the evidence. In dealing with the merits of the case, if you will, however, I'd like to make a couple of general observations. First, the time restraints. If we stood here for literally days, we might be able to fully cover all of the issues and all of the evidence that we think might be available in support of the State's Case on those issues. Further, with all due respect, our opponents are well represented here in the form of Mr. Tom Tureen and I assume that in the give and take of the adversary system, there are some things we would prefer he not know at this time and I'm sure he would have a few things he would not want us to know at this time. But I think that we shouldn't address this important issue on such a pedestrian level. It is, however, a fact. Finally, there are the constraints of the ethical considerations that bear on discussing in public cases that are pending in Court. It has been generally thought that lawyers ought to try their cases in Court and not in public; however, I feel that the presence of this distinguished Committee--Commission--and the Legislative responsibility they have would justify a bending--at least a bending of those ethical restraints because I consider the inquiry to be very legitimate and I consider the obligation to respond to the best of my ability.

I think the primary and perhaps the most important defense that would be advanced and I hope and believe would be successful would be that, indeed, the Non-Intercourse Act which is the basis of this and virtually all other similar claims was never intended to be and is not applicable to the Eastern Indians. The United States Supreme Court in a recent case, *Wilson against Omaha Tribe*, so stated. The Solicitor General upon the request of Mr. Tureen,

I believe, although I am not sure, addressed a motion to the United States Supreme Court and said we think you ought to strike that statement in your decision in Wilson because it would tend to pre-judge pending cases including the case involving the State of Maine and it was of great interest to me to note that the Supreme Court explicitly refused to strike that statement from its decision in Wilson. This was just within the last few months; however, to show the complexity of these cases, the United States District Court for the District of Connecticut wrote a decision contrary to that statement that appeared in the Wilson Case of the United States Supreme Court in the Mohegan Case said that, indeed, the Non-Intercourse Act was applicable to the Eastern Indians. Historically I would believe that the evidence could show quite overwhelmingly that the situation that existed in 1790 when the Non-Intercourse Act was first enacted shortly after the adoption of the Constitution found the United States to be victorious in the Revolution, however, having a standing army of about 500 soldiers with nations, literally nations, capable of raising substantial armies aligned on its Western Border, these were called the Indian Nations, Indian Tribes. When the Revolution was resolved by treaty, the Colonies and Great Britain resolved their differences but Great Britain had no authority nor did it purport to act on behalf of the Indian Tribes that had supported Great Britain in the American Revolution which involved virtually all of the war-like Tribes on the Western Borders of the Country as it then consisted. So we had to make our peace separately with these then independant nations. The Constitution and framers of the Constitution in their wisdom granted to the Federal Government, the States, including the State of Massachusetts, part of which is now the State of Maine, ceded

that authority to the United States to deal with the Indian Tribes.

Why? Because they were nations with whom we had been at war and were in a position to threaten if they were so inclined the continued existence of the Government of the United States as it then existed.

President Washington determined that a better way to proceed was not to challenge these war-like Tribes but to seek to get along with them, to accommodate them, to avoid, if you will, incidents that would result in war-like actions on their part and as we all know, and perhaps as a part of human nature, land disputes often are the cause of irreconcilable positions being taken by various people. We've seen that here today. The Government recognized that we cannot have independent people going out and making deals with Indians concerning land for several reasons. First of all, disputes are bound to result in conflagration. We as a new nation couldn't afford to have that happen. We'd just been through a revolution. Furthermore, the Federal Government had to know what lands it had a responsibility to its citizens to protect and there were other considerations. All applicable to the Western Indians. There was no difficulty with the Eastern Indians. They were not war-like, in fact, most of them fought on the side of the Colonies. They were not enemies, potential or otherwise. The story can be told in far greater detail but let me summarize by simply saying that the purposes of the Non-Intercourse Act of 1790 and the reenactments thereafter were designed not to meet the threat of any Eastern Indians because such threats did not exist. They were designed to meet threats from the Western Indians and the history of the American Indian-United States Government relationship up until very recent times has dealt solely with the United States Government who has

the responsibility and the authority under the Constitution to deal with Indian Tribes and organized tribes, progeny of the Western Indian Tribes, most of whom entered into treaties with the United States in resolution of these disputes in a peaceful manner and consistent with the designs of our Government. As you know, no such treaty exists with respect to the Indians in the East. Specifically, no such treaty exists with respect to the Maine Indians so I feel quite confident when this issue is fully addressed, that this issue should prevail. In all candor, I must say that this same argument has been addressed to the United States District Court of the District of Connecticut in a very fine brief of amicus curiae written by the Office of the Attorney General of this State arguing that the matter before that Court, apparently without significant effect. But that's what we have a Supreme Court for. That's why I say this case is bound to go all the way to the Supreme Court, probably on appeals from both sides. We further think that another defense available and a good one arises out of the circumstances wherein Maine became a separate State from the State of Massachusetts where I come from. I think this took place in 1820, if my memory is correct, and at that time, there was a review as indeed there had to be by the Congress of the United States of the undertakings of the new State of Maine with the old State of Massachusetts and some of those undertakings specifically related to the responsibility for the care of the Indian People in what would be the new State of Maine. Those undertakings were fairly explicit and set out in the documentation submitted to the Congress for its approval of Maine becoming a new State. The Congress approved of those undertakings. We, therefore, argue and I think with considerable force that that

Constituted a ratification by the Congress of the United States and the United States Government of the assumed responsibility by the people of the State of Maine for the American Indians and recognized the validity of such land transactions that had taken place prior to 1820. However, this same argument has been addressed to Courts, Inferior Courts, and I believe this same argument was addressed by the decision in Passamaquoddy against Morton, which as Mr. Wiggins has pointed out is a very limited decision but it is a decision without affect. I think, however, it is a valid argument, that if addressed to that Court again, but surely to the United States Supreme Court, would be a productive victory for the people of the State of Maine.

There are other evidences of Federal ratification of titles. Every time the Federal Government makes a taking for a highway and so forth recognizes the title of persons deriving title from Indians--prior Indian conveyances, we say constitutes a ratification of prior conveyances and there are other evidences to which--on which we would rely for such a claim of Federal ratification. You should understand, as I explained earlier, the power in our Government that can deal with this is the Federal Government. The States and Constitution ceded that power to the Federal Government in the Commerce Clause of the Constitution in which it said the Federal Government shall have the responsibility for governing commerce with foreign nations, commerce among the several states and with the Indian Tribes. So that's why I said to you earlier we have to have a tripartite agreement in which the United States Government is an essential part because only the United States Government can ratify, confirm and clear the titles to the land in the State of Maine which is what the

State claim--Indians claims are all about. We say that the Government of the United States has done this when Maine first became a State for the reasons that I have outlined and has done it on a number of other cases. We say, therefore, that the titles have been ratified by the authority of the Government of the United States which has the only power and authority to deal with the matter. Further we say that the Tribes, particularly the Penobscot and Passamaquoddy, do not qualify as Indian Tribes within the meaning of the Non-Intercourse Act and the Acts that follow thereafter. First, because they do not have nor can they demonstrate the necessary sovereignty to constitute a Tribe today and even if they could so today, they cannot show that over the years without exception and continuously since aboriginal times have they maintained their identity as a Tribe. We believe the law to be that they must show not only that they are a Tribe now, which the Mashpee Indians were unable to do in the Mashpee Case, and with all due exception to Mr. Wiggins when he said none of these cases have ever gone to trial, one has gone to trial and the Indians lost that case. A precedent, I think, that might share some light as to why we think ultimately we would prevail. But, however, back to the required continuity that we believe the law establishes for the plaintiff to show that not only that it is now a Tribe but that it always has been a Tribe continuously since aboriginal days. We think that they cannot do that. We think that there are large gaps in the history that show the lack of the necessary ingredients of a Tribe so that the continuity does not exist that is required by law.

We think further that the Tribes would have a great deal of difficulty in establishing that they in fact did exercise exclusive

dominion over the size of the claim they now put forth which consists of more than half of the State of Maine. Under no circumstances is it conceivable to me that a group of people of this size can contend that they had the exclusive control and domination of an area of the size they now claim. I don't think they can show that. This argument, of course, would not be productive of a complete win but certainly if it were to prevail and all other arguments were to lose, it would certainly cut down substantially, in my view, the area to which they could establish a claim. It must be an exclusive occupation and domination. I don't think they can show that to very large areas in the State of Maine. Again, however, these are matters in which I am sure Mr. Tureen and the very distinguished Staff that works with him would take issue.

There are a few other issues that I could mention. I don't know how much longer I should be going here. A question was addressed earlier today, does the Statute of Limitations afford a defense for the defense of laches, which to the lawyers among you would have a meaning, let's call it the equivalent of a Statute of Limitations for the purposes of this discussion. Is that an applicable defense? Mr. Tureen indicated as I recall today, he did not think it would be an effective defense and believe it or not, I'm inclined to agree with him because the theory behind the Non-Intercourse Act is that the Indian People are not--were not competent as a matter of law to convey title. It would require the ratification of the Federal Government to do so. Now there are ways and there are ways of conveying property. One of them would be to permit an adverse possessor to take occupation of land, let the period of limitations or laches expire and the possessor now owns it. For obvious reasons, if the Indian Tribes

were incapable as a matter of law of passing title, they can't pass it directly or indirectly. Judge Pettine in the United States District Court for the State of Rhode Island so held and I think Mr. Tureen is correct that there is a long line of decisions that would tend to support that and the reasons, I think, are clear; however, there is respectable authority for the proposition that a Federal Common Law of Laches could be applicable. Wherein the Federal Government has authority to deal with Indian Title, they can develop a Law of Laches and there is at least one, and I think two, United States Supreme Court decisions so holding. That would be a defense available to us in our opinion. In order to support this defense, then, we would have to show, as I think we could, a knowledge on the part of the claimants and their predecessors in interest of a claim and with that knowledge, not doing anything about it for many, many years, not doing anything about it so as to bring into play the Federal Common Law of Laches as distinguished from State Law Statute of Limitations or State Law of Laches.

I think further that consistent with a recent and famous United States Supreme Court decision in the Rosebud Sioux Tribe Case that the relationships over many years between the plaintiff Tribe and the State, in this case the State of Maine, and the reasonable expectations of the people on both sides of the argument based on that relationship should not be lightly overturned by the Courts and in Rosebud they said in substance, look, both the Indian and the non-Indian for many years have thought that a certain boundary, let's say, has existed. Whether or not it really exists there at this point is really, in our view, immaterial. Both parties thought that was the situation. Their relationships were

based on it, we are not going to disturb it. We believe that that theory is applicable to this case. There are other defenses available. They do become more and more technical as we go through them. I am not clear in my mind that they would be of great enlightenment to you if we were to go through them and I don't think we would have sufficient time because to give a thorough treatment of all of the matters that we would seized upon in defense of this case would take, as I say, many hours but I would like to leave with you in which I think is the thrust of the request is a summary of why we say we think we would win and leave with you, again, however, an understanding of why I say while we would ultimately win, it would be a long time, it would be expensive and no one is issuing a gold bond certificate as to the result.

I would be pleased to try to respond to any questions through the Chairman that any of you would like to address.

SENATOR COLLINS: Are there questions from Members of the Committee at this time?

MR. ST. CLAIR: I would only hope I could, I'm not guaranteeing that I will but--

SENATOR COLLINS: I'm sure we will call upon you in the future if we have questions but at this time are there any Committee questions you'd like to propound to Mr. St. Clair?

MR. ST. CLAIR: Thank you, Mr. Chairman.

SENATOR COLLINS: Thank you, Mr. St. Clair. We're going to take about an 8 minute break to stretch ourselves and then we're going ahead with some neutrals, with some proponents and then finally come back to opponents.

[OFF THE RECORD]

SENATOR COLLINS: Let's resume. At this time we will hear from Mr. Libhart.

MR. LIBHARD: I would like to speculate just for a moment on what might happen here in order to make a point that I think is extremely important for your Committee to consider. It seems from all of us watching the Washington scene that there's going to be some great difficulty in getting Congress to fund the Bill that is the third part of the proposed Settlement to these Claims. If it is not funded sufficiently, obviously it will not please the Indian Tribes. While that is going on, it seems almost certain from what we have heard here today that some kind of proceedings are going to be brought at least from the dissidents of the Penobscot Tribe to try to declare invalid the vote that was taken with respect to the acceptance of this Proposal by that Tribe. That may also mean an extended and protracted case in Court. If those things happen down the pike, then we're not going to be any better off than we are today. At no time today has anyone reaffirmed the position that those of us who have been watching this situation for several years now know so well. But perhaps it is worth restating. The United States Congress by a very simple act can extinguish these claims. Now, I am very well aware that this Proposal has been made, I'm very well aware that President Carter in Bangor, I believe, in March of 1978 in response to a question from one of the Penobscot Indians as to whether or not he would veto a Bill if it were passed, he paused for a moment and said yes, he would. President Carter has been known to change his mind before, he may change it again, or he may not be the President when this Act finally reaches him.

It seems to me that it is absolutely--at least for me it's unbelievable that we in this State have spent so much of our resources and so much of our time, including the time of all of these people today and your Committee and now the Legislature under-the-gun as it were. We're being told, you must make some kind of Settlement because if you don't there is a possibility of losing this case. If we have the kind of guilt feelings or whatever have you towards these Indian Tribes, that they have not been fairly used over the years or they were not fairly used in 1790, then it seems to me, at least, that we should be making a logical approach towards some legislation both in Maine and in the Federal Congress to make some better situation between ourselves and those people. But we should not be doing it under-the-gun. There isn't anybody here, lawyer or historian or anyone, who has studied this case thoroughly who would not admit readily that had the United States Congress in 1790, 1800, 1820, 1850, 1960--maybe 1960 is a little late, but 1950 at least--had this problem addressed to them, the people in Maine are concerned over their land titles because there is some potential claim, the Congress, I think without any delay, would have acted to extinguish those claims. There isn't any question in my mind about that particularly in the late 1700's and the early 1800's when all of these things were going on. Why is it wrong today for the Congress to extinguish those claims? Why aren't we pushing that approach? It seems to me we've got the cart entirely before the horse. We should be asking--the Governor of the State of Maine who I recall and I'm sure you all recall has said over and over again if this case is to be in the favor of the Indians, then some Court should tell us that because the Courts are not going to tell us that, we're

going to win. The place to settle it is in the Court. I think the place to settle it is in the United States Congress and I think our Congressional Delegation should be able to convince, at least at this late date after all the money that's been spent, our Delegation down there that we do have a serious problem in Maine with financing, whatever it is, the Town of Medway, the City of Millinocket, or whatever it is, and extinguish the claim which they can do very quickly, they have complete authority to do it, they certainly intended to do it, everybody agrees with that back in the late 1700's early 1800's. It seems to me that's where the pressure should be. At the same time there could be an on-going approach. For those of us, and I happen to be one of them, who feel very strongly that our Indian Brothers have not been properly treated over the years, we should be doing something about it and it shouldn't only be the Federal Congress that should be doing something about it. It should be in partnership with the State of Maine. But it should not be done under-the-gun. Now, that's the approach that I think we should be taking. If you persist, though, in going in this situation, I think our Indian Brothers had some very good points. Not only have they been rushed terribly in making their decision, you as a Committee are being rushed terribly in making your decisions. I've asked the Attorney General today to confirm something that I believe to be totally true. This Bill would abolish as far as Indian Territory is concerned the Colonial Ordinances of 1641-1647. Now the Colonial Ordinances of 1641-1647 are the Ordinances that are part of our common law that allow us to go by foot to the great ponds to fish and fowl and other things. Now, by abolishing the Colonial Ordinances with respect to Indian Territory,

it wouldn't do us a bit of good to have an Indian fishing license or hunting license by way of the common law and the bounds of the Indian Territory were properly posted for trespassing. That could be developed and the sportsmen of Maine should be very well aware of this. The result of this present Bill in its present form if passed with the proper approach by the Indians would prevent, if they wanted to, hunting and fishing in Indian Territory by non-Indians. There are a lot of other problems with this Bill. I think it was hastily drawn as we often do in Maine and Senator Conley is not here but I served in the Legislature with him a hundred years ago in his first term. We did it then, we do it now. We don't properly prepare ourselves. You remember Attorney General Lum begging for money way back to get prepared for this case. It wasn't given. Why do we have to do things in such a rush. I think the Indians should have more time so that their people feel confident that at least when the vote is taken, it is an intelligent vote and I don't think you'd see these folks here today so up in arms if they felt they had proper warning and they had been voted down. Their complaint is that they didn't have proper warning, they didn't have a chance to talk to the others, they didn't have a chance to make an intelligent decision and they don't like it. The people of the State of Maine are going to be feeling the same way towards you folks. If a Bill printed March 26, 1980, heard today, is enacted Monday and Tuesday and the sportsmen of the State of Maine discover after two or three years, after this thing has been fully funded and everyone has woken up to the consequences that they've lost the vast areas of prime hunting and fishing to, all intents and purposes, for their own use. Thank you very much, Mr. Chairman.

SENATOR COLLINS: Thank you, Mr. Libhart. I'm going to ask the Attorney General to respond to the Committee, not right now, I guess, because we have a few other people, but I will put in on our agenda to have some responses to that particular suggestion.

REPRESENTATIVE HOBBINS: Is it possible to ask questions of the witnesses, especially the last gentleman who testified, Mr. Chairman?

SENATOR COLLINS: You'd like to ask questions of Mr. Libhart?

REPRESENTATIVE HOBBINS: Libhart would you like to submit to a question?

MR. LIBHART: I'll try.

REPRESENTATIVE HOBBINS: Thank you, Mr. Libhart. You stated that you would like to have Congress act to extinguish any title that the Indians might have in the property which is under contest. The question I have, put yourself in the situation where you had a legal issue and you had a forum to have that legal issue discussed. Would you want your right to have that legal forum taken away by Congress--an Act of Congress?

MR. LIBHART: I am in that exact position right now and a lot of people in this room have been. Not only does the United States Congress have the right to take your property and mine for Federal purposes by eminent domain proceedings, but the State of Maine has always had the right to take your property and mine for eminent domain proceedings.

REPRESENTATIVE HOBBINS: But there's compensation that is provided.

MR. LIBHART: I understand that. I suggested and I strongly suggest that I feel very strongly about it. If the conscience of this State is such that damages should be paid because of some claim that is

being extinguished by this power that the Federal Congress has had ever since the enactment--the acceptance of the Constitution, if we feel that there is merit to this claim and if we feel that there has not been proper compensation, then I feel very strongly that it should not only be the Federal Congress who is appropriating funds to make repartition but it should also be us in the State of Maine. Now, I do not agree that the vast territories that the Indians seem to claim are the subject matter of proper consideration of damages because the Indians did not occupy those territories. They never claimed title to them. There's no word in Indian for deed or ownership of land. Their highways were the rivers, the coast of Maine and that's all they ever occupied. If you want to read Indian history as I have done for many, many years, they did not go the Katahdin. Most Indians were deathly afraid of Katahdin. We see in the papers that Baxter is subject to this claim. It's not.

REPRESENTATIVE HOBBS: I'd like to raise another point with you. Let's say Congress did, in fact, pass a bill to extinguish the claims and that was challenged in the Courts by the Indians through Mr. Tureen and let's say they argue 5th Amendment due process questions, about whether or not you can extinguish a person's trespass damages which a person can get if he shows or she shows that there's been damage to that person or that land or that land was owned, in fact, and there are damages. Part of this suit is not only getting the land, part of the suit could be to trespass damages. What happens then if there was a judgment, a huge trespass judgment, one by the Indians? What you could find is that they could get the land anyway through an execution--levy of an execution on the losing defendants' real estate. There's that possibility.

MR. LIBHART: Well, if you're talking in percentages as we are here today, with the Attorney General conservatively saying it's a 60-40 chance--I happen to think it's probably 90-10 chance of our winning--the chances of that kind of thing that you've just given to me is probably about two or three percent. You can lose any lawsuit it but you've got to talk in realities and what you've just proposed, is a possibility that's not going to happen unless there's a terrible change of thinking in the people of the State.

REPRESENTATIVE HOBBS: There's probably only one or two things that are sure in life but that is a possibility like the possibility that the State of Maine could prevail, there's a possibility that the Indians could prevail. But there is that possibility and the issue I just raised is not out of the extreme that it might not occur.

MR. LIBHART: Trespass actions have always been tried in the State of Maine by juries and I'm an old trial lawyer and the old trial lawyer always says, if you're going to lose, settle, and if you're going to win, fight, and that's the one I'd want to fight.

SENATOR COLLINS: Thank you, Mr. Libhart. The next speaker is Mr. Floyd of Bangor.

MR. FLOYD: Senators, Representatives, I am Joe Floyd, the Public Member of the Atlantic Seamen's Salmon Commission. It's the independant Commission that is mandated by the Legislature to oversee all aspects of the Atlantic salmon. May I say at the outset that I sympathize with the Committee on the enormity of your task and myriad of problems that have been presented here this morning on this Settlement question. You are certainly to be commended.

I'm not here to argue the merits of either side of the Settlement. I'm serving more in a capacity--in a more informational capacity to apprise the Committee of some of the potential disastrous effects that could result should we fail to understand the fragileness of the environment of the Atlantic Salmon. The Atlantic Salmon is an anadromous specie; that is to say, it feeds and matures in the salt water and then it goes to fresh water to spawn. Now, unlike the Pacific Salmon, it does not die after spawning. Indeed, it returns to the sea and can come back and spawn again and again. Its progeny spend the first three years of its life in fresh water and then when it reaches about 6 to 10 inches long, it will then go to the sea. From that time, it will spend from one to three years in the ocean maturing and then it returns to the river of its origin and then it will complete the spawning cycle. Now, contrary to popular notion, in Maine there is a proximity of Atlantic Salmon. Now, in a normal year, now, normal year, one would be hard pressed to find 5,000 adult Atlantic Salmon in the State of Maine. An abnormal year, last year, you probably would have been hard pressed to find 3,000 adult, spawning Atlantic Salmon in the State of Maine and those may indeed be outside figures. The fragile character of the habitat and environment of this specie demands constant management and biological attention. Now, since 1947, the Atlantic Seamen's Salmon Commission has committed all of its energies, its expertise and its resources to maintaining and restoring this most famous fish to the historical rivers of Maine. We have experienced a notable success in restoring the salmon to the Penobscot River. We presently enjoy an adequate fishery in all the other rivers; however, in each river, the success is predicated

on a careful monitoring of each waterway and watershed. We have established no fishing sanctuaries in critical areas on the Machias River, at Libby Brook, at Mopang Stream, Old Stream and Crooked River. We closed to fishing for Atlantic Salmon at Sodom Brook and Scoodic Brook on the Narraguagus Rivers. We entertain the same measure of restraint on the Kenduskeag Stream and the Penobscot Rivers. We allow only fly fishing for the Atlantic Salmon. Last year we closed the season two months early rather than risk losing our stock for the future. This year, we delayed the opening of the Atlantic Salmon Season by one month to May 1. We cut the bag limit down to one fish daily in order to--we don't want to take any chance whatsoever with the future of this fish and to take any chance we would consider would be specious on our part. That is why you can appreciate a concern with the distinct possibility of some parts of these rivers falling within the confines of the Settlement. It also appears that the one and a half mile proviso will occur on the Mopang Stream--the head waters of the Mopang Stream in the Machias River, head waters of the Pleasant River and in critical parts of the Penobscot River. Now, to allow sustenance fishing, would be sheer folly. It is possible, now, with this sustenance fishing that, indeed, it would be possible for the Indians to string a gill net or string any net, a bag net or anything, right across these rivers and completely wipe out--completely wipe out the spawning stock. Now, to allow any group, whether it be Indian, private or commercial to have jurisdiction in the habitat of this Salmon is incomprehensible. Double standards of management could be disastrous and could signal the death bell of a lifetime investment. We consider it most necessary for us to maintain authority over this fish.

We must be party to any regulations regarding the present and future of the salmon. The Commission Staff has just completed after years of research and data seeking extensive and intensive management reports on each of our rivers. They contain the blueprints to ensure this future. These show the results of some \$25 million worth of effort having been put into the program. I would employ each of you on this Committee and each Member of the Legislature to weigh very carefully the consequences of this Settlement. Jurisdiction in its present proposal form could spell danger to the salmon. One irresponsible act, one innocent mistake, one error at the wrong time, could ruin a hundred years of work research and dedication to the Atlantic Salmon. It certainly bears the Legislatures closest consideration and attention. Thank you.

REPRESENTATIVE PEARSON: May I ask a question.

MR. FLOYD: If I can't answer the question, we do have Al Meister here who is the Atlantic Salmon expert.

REPRESENTATIVE PEARSON: I may want the Deputy Attorney General to respond to the question if he so desires. I believe-- I can't put my finger on it right off because I don't know the Bill by heart but I believe there is a mechanism in here to prevent an instance like you're talking about. The Commission of Inland Fisheries and Wildlife could step in and say you're doing it wrong, you cannot do that any more. Is that not correct?

MR. FLOYD: The mechanism is there but it may be too late of a mechanism.

REPRESENTATIVE PEARSON: How long, Sir, did it take you before you were able to stop the clubbing of fish in the Kenduskeag Stream several years ago?

MR. FLOYD: That was two years ago. It took too long. It took too long, yes. The only concern--the only thing we're concerned about is the immediacy of the fact that you could completely stop a run. In the Kenduskeag Stream it wasn't a case of them running but it was a case they did indeed kill fish. We'd be concerned about if you could string a net, you could completely--like Mopang Stream, for example, they could completely net out--it would be possible to net out the entire spawning area of Mopang Stream.

REPRESENTATIVE PEARSON: But there are mechanisms, are there not, in this Bill to prevent that from happening?

MR. FLOYD: After the fact. It could be after the fact. As I understand it, it could be after the fact. In other words, it does say at the end going through all the process with the Commissioner getting together with the Committee that yes, indeed, and the Commissioner would have the final result in saying--in regulating the fish.

REPRESENTATIVE PEARSON: Is it conceivable that right now somebody could put a gill net across the stream and do the same sorts of things in violation of the law and you not catch it?

MR. FLOYD: Yes, it is possible.

SENATOR COLLINS: Thank you, Mr. Floyd. Our next speak is Louis Flagg of Winthrop.

MR. FLAGG: Mr. Chairman, Members of the Committee, my name is Louis Flagg and I am a member of the Department of Marine Resources and I would like to readjust the question that Senator Pearson had regarding the regulations that the Commissioner of Inland Fisheries and Wildlife would be able to promulgate in an emergency situation. As I understand

the Bill, it does allow for a subsistence fishery without regulation and I think this is where the concern lies, is that a subsistence fishery would not be subject to regulation by either the Tribal State Commission or the Commissioner of Inland Fisheries and Wildlife. Now, that is where I think the issue becomes an important one. I would like to just draw to the Committees attention two items of concern to the Department of Marine Resources. The Department is responsible for the management of Alewife Fishery Resources which are currently harvested by 28 coastal municipalities. For two of these municipalities, these exclusive fishing rights historically granted by the Legislature will be compromised by the passage of this Bill. They are the town controlled Alewife Fishery by the Town of Franklin and the Pleasant River Alewife Fishery controlled by the Town of Columbia Falls. Both of these runs are dependant on fish production in waters which will come under the regulatory authority of the Tribal State Commission. As the Department of Marine Resources does have primary responsibility for the management of this fishery and jointly regulates fishing for other anadromous or sealand fish species, we would like to recommend that the Department of Inland Fisheries and Wildlife be required to consult with the Department Marine Resources prior to making any regulations related to anadromous fish stocks that may be fished or come under the regulation of the Tribal State Commission. The Bill also makes reference to treatment of Indian Territory as municipalities, however, with regard to hunting and fishing issues, there is established a special relationship between the Department of Inland Fisheries and Wildlife and the Tribal State Committee. Tidal waters of the State do not come under the jurisdiction of the Department

of Inland Fisheries and Wildlife. As the Pleasant Point Reservation is adjacent to tidal water and future acquisitions could occur of lands adjacent to tidal water, the question that we have is would Indian Fisheries such as shellfish or aquaculture in tidal waters adjacent to Indian Territory be subject to rules and regulations of the Department of Marine Resources? And we feel that there is a need to clarify the State authority over any present or future Indian Fisheries which may occur in tidal waters of the State. Thank you.

SENATOR COLLINS: That you, Mr. Flagg. Our next speaker is Isabelle Shay.

MS. SHAY: My name is Isabelle Shay and I am of the Wabanaki Nation. I want to start by asking questions that no one can answer and make some observations and a statement which I find hard to deliver under these most oppressing conditions.

Question one, if the little green squares on the map represent major progresses that Native People have made to get back their lands, then what does the big white background mean.

Number two, was the Land Claims Settlement based on keeping one man out of Federal Prison or was it based on genocide of Native People?

Number three, why were the Legislators this morning speculating how to impose their laws on the Indian People even though the Settlement is not final?

Number four, If winning the Land Claims means not guilty for injustices done to Native People in history, what does losing the Land Claims mean?

I want to make the following observations. Two incomplete statements were made that were highly symbolic to me at least. Becoming a new municipality

is progress, indeed, for rural and off-reservation Indians but for a sovereign nation, it is a put down. If Maine is a sovereign State, then we are a sovereign nation. I wish to base my statement on a remark I heard this morning. "Maine should not be burdened by what is clearly a Federal Matter." Every possible Court action or legal avenue has not been explored nor has every alternative for a fair hearing been examined. When the Constitution of the United States was drawn up, Native People were not considered so objectivity is impossible within the legal framework of the United States. The only way Indian Nations can be guaranteed objectivity is to go to the United Nations and the World Courts and be represented by International lawyers. If that is done, I personally think that the Wabanaki sovereignty will ultimately prevail and I make that statement without any reservations. Thank you.

SENATOR COLLINS: Thank you. Our next speaker is James Mitchell of Vassalboro.

MR. MITCHELL: Senator Collins, Representative Post and other Representatives and Senators, I had suggested earlier today to several people that I had some technical amendments to this Bill. I have been involved in the Case for about as long as there's been a case in one way or another; however, as I talked to people on both sides of the issues, it became clear that the technical amendments were more than that and that the ideas that appeared simple had been very carefully argued and debated. I don't need to go in today or at this point to the various technicalities which I thought could be dealt with by the Committee but rather to reinforce the arguments that have been made by both sides that this Bill has been negotiated and should be adopted as it is. Amendments can

be made in the future by another process. So I will leave the technical amendments and go to another area. Most of what I had planned to say has been said, fortunately for you, I will then be shorter and it need not be said again. I was going to talk about the history of the Indian Peoples but they have talked about it themselves. I was going to talk about the cultural tenacity of the Indian Peoples but they have demonstrated that on their own. I was going to talk about the necessity for a land base and I was even going to make a comparison that was made in a way I'm not sure was intended to be complimentary but can be. The comparison to the only other peoples in our Western Civilization who have exhibited the kind of century after century cultural tenacity that the Native Americans have exhibited and that is, in fact, the Jewish People. It is not surprising that after 2,000 years they still felt the need for a land base. A land base to maintain a civilization. A particular manifestation of humanity which it would be a tragedy to lose. So the Indians, they need a land base to maintain what is, in fact, a civilization. A particular manifestation of humanity which it would be a tragedy to lose. Now, there is some question which has been raised today by certain members of the Penobscot Nation but the purpose of this Settlement is to create a land base to allow these people of dignity of control of their own destiny on their own land. If the questions that have been raised are sufficient to make this Committee believe that the Settlement has not been endorsed by the Indian People, then I think the Committee should satisfy itself in one manner or another that the Indian Peoples have, in fact, endorsed the Settlement. It appears to me and I am going to assume that that is the case. If we are able to take the historical

traditions that we have been told about and reverse them, if we are able through our system to return a significant land base, we are able to say for the first time in 200 years that our system really works. Now, the Indians have been told to use the system ever since we've been here and they have been trying. In 1887, an Indian, another Indian named Mitchell, went to this Legislature. He was a Passamaquoddy and he spoke to this Legislature trying to get land back for the Passamaquoddies. He said, we look around and we see all the rich men worth thousands even millions of dollars in Cherryfield, in Milbridge, in Machias, East Machias and Calais and we ask ourselves, where did they get their money? The answer is said Louis Mitchell, they get it from timber on land that used to belong to the Passamaquoddy Indians. They have been trying to get this land back that long. They have been told to use the system and now they have used the system and the system has worked and the one thing that really hasn't been said here today and the last thing I am going to say is this Settlement should be endorsed because it's just, because in this country, in this State before this Committee and at this time, justice can be obtained through our system.

SENATOR COLLINS: Thank you, Mr. Mitchell. Our next speaker is William Bullock of Bangor.

MR. BULLOCK: Senator Collins, Representative Post and Members of the Committee, my name is Bill Bullock, president of Merrill Bankshares Company of Bangor. Our bank is one of the largest banks serving Northern, Central and Eastern Maine with some 50 branches located throughout the original Indian Land Claims area of 12.5 million acres. It is now approaching four years since Judge Gignoux ruled in the early fall of '77 that the

that the Federal Government did have a trust relationship regarding the Indian People of our Country and, consequently it was the duty of the Federal Government to bring suit against our State of behalf of the Indians to recover their disputed lands. One of the consequences of this ruling were some grave economic consequences at that time which included the inability of municipalities and other public bodies in the Indian Claims Area to sell securities and, in fact, kept the State of Maine, its Bond Bank and housing authority out of the public markets for more than six months. In addition, with the threat of litigations against individual properties such as was done in the Mashpee suit, for awhile early in the fall concern was such that many banks in the Claims Area did not make mortgage loans and to this day, all title opinions on real estate in the Claims Area contain a disclaimer regarding our Land Claims Suit. You will recall that beside individual homeowners, the question of title held up the construction of the 40 million dollar Bangor Mall Project for almost two years. In the fall of 1977, I was appointed by former Governor Longley as head of the Task Force to study the economic implications of the Land Claims Suit. Serving on this Task Force were members of both the Senate and the House and private citizens, including bankers, lawyers and also members of the various interested departments in State Government working with us. In addition, the Governor, then Attorney General Brennan, Deputy Attorney General Patterson and many others. Consequently, I feel that I do have some knowledge concerning this most serious matter and would like respectfully to offer the following comments supporting the ratification by our State House of Representatives and Senate of the proposed Land Claims Settlement.

The original tentative Settlement agreed upon several years ago called for a financial payment of approximately \$60 million from the Federal Government or approximately \$115.00 an acre. The current package of \$80 million works out to a per acre cost in the neighborhood of approximately \$180.00, which when one considers the compounding of double digit inflation and the increasing land values, does not appear to be out of line. Today's editorial in the Bangor Daily News questions several areas of the Proposed Settlement, especially the cost and here again, I would suggest the following: The people of Maine and the Indian people are indeed the innocent parties here of an action that took place almost 200 years ago with the real burden lying upon the Federal Government. The Federal Government got us into this can of worms and it's their responsibility to get us out. Unlike the Western States, we have never received any Federal Funds for our Indian People from the Bureau of Indian Affairs and I look upon part of the \$80 million from the Federal Government as funds justly due our State for reimbursement of the financial costs that we have paid for the human service needs of our Indian People for over this period of time. Is \$80 million such a substantial sum for a Federal Government with a budget approaching three-quarters of a trillion dollars to pay a State with one of the lowest per capita family incomes in our nation to prevent it from suffering the dire economic consequences of a long and protracted court action or the possibility, again, of our State and its political sub-divisions not having access to debt markets or people not being able to buy and sell real estate. For example, there is nothing to prevent if some action is not taken the instituting of liens against property owners in the Claims Area. This could be of such a consequence, it could bring our most important

industry, the paper and pulp industry, to its knees. The Mashpee suit has been settled well over a year now and still they are having problems unraveling the liens that were placed on the real estate in Mashpee by the Wappanogs with adverse affects on titles still changing hands. The Bangor Daily News further indicates that the State has a strong legal position. While I am familiar with the State's case which does appear to be a strong one as articulated by our Attorney General Cohen, Mr. St. Clair, Mr. Wiggins, I personally do not have the faith in the Court System that we can win a protracted trial. The facts are we have yet to win in any preliminary opinions in the Courts. The costs and the uncertainties of a protracted Court Trial to me are just not worth the risks.

The opponents of the Settlement argue, like Mr. Libhart, that 9,500 Indian Claims pending in Congress will result in Congressional action abolishing aboriginal rights or claims of the American Natives. This is to me ridiculous and wishful thinking. Can you imagine the affects on the foreign policy of this country which has continued to expound the subject of human rights as one of our most important policies.

Lastly, there is concern regarding the jurisdictional question of laws on Indian Lands. In this regard, the Proposed Settlement worked out by Attorney General Cohen will give our State much greater control and jurisdiction than any other State in the Country over Indian People. Here again, I might add that I am a member of the Penobscot Salmon Club and I have been known to wet a line here and there.

In conclusion, Senator Collins and Members of the Committee, I urge your prompt and favorable recommendation of the Proposed Settlement. This is a

problem that has been with us now for over a decade and one which cannot be swept under the rug. It will not go away. In order for our State to prosper in the 1980's, it is imperative that we get this Land Claims Problem solved as soon and as expeditiously as possible. Thank you.

SENATOR COLLINS: Our next speaker is William Ayooob of Millinocket.

MR. AYOOB: Representative Post, Senator Collins, Members of the Committee, my remarks to you will be very brief. I'd just like to explain to you what the Indian Land Claims have done to the particular community that I serve. I am the Town Manager in Millinocket. I can sympathize with the points that have been brought to your attention this morning and this afternoon from both sides of the issue and I'm sure it's not going to be an easy decision for you to arrive at to make your recommendations to the Legislature. But the position Millinocket finds itself into is right in the core of the entire Claim. This past year, 1979, the Town as it normally does, sought out and received \$3 million in tax anticipation notes. The notes were issued on a qualified legal opinion. The qualified legal opinion being that our legal opinion was very good except in it it mentioned that we were subject to the Indian Land Claims. The Boston Market that took those tax anticipation notes in 1979 found that they could not resell them and looked back to the banks in the State of Maine to take some of those notes back. Unfortunately the Town of Millinocket wasn't aware of what happened until 1980 when I went out to sell \$3 million worth of notes again and the banks that have been extremely courteous with us and this is not a discredit in any way to them, however, I did not realize what happened in 1979 until January of 1980. I finally did get through the courtesy and the hard work of one of our local banks a million and a half and God willing,

some time in May I will be told that we can have the other million and a half of tax anticipation notes and the crux of our problem is not of our ability to pay. We're one of the most fluid financial communities in the State of Maine but it's getting a good legal opinion that's bothering us. We don't know where it's going to end. But it's posing us a very serious problem. Based on that, I would ask you to give very serious consideration to a positive acceptance of this package.

SENATOR COLLINS: Thank you, Mr. Ayoub. Mr. Howard Cousins.

MR. COUSINS: Senator Collins, Mrs. Post, Members of the Committee, my name is Howard Cousins, I'm vice president of the Bangor and Aroostook Railroad in Bangor, Maine. I, too, will be short in view of the time. I urge acceptance--favorable acceptance--of this Proposed Settlement because of our concern for industry, particularly in the pulp and paper industry. We are completely a part of the pulp and paper industry and to the extent that some 88 percent of our business concerns the pulp and paper industry, that's pulp wood in, wood chips in, paper out, logs, lumber, wood pulp, bunkerseed oil, clay, chemical, starch, etc. We show in our good example of the ripple effect of what happens when you do approach an industry with an action such as the Indian Lands Claim. We employed last year 877 employees and we paid them over \$14 million. We, the employees and the management of the Bangor and Aroostook Railroad, urge acceptance favorably of this report and Settlement of the Indian Lands Claim. Thank you.

SENATOR COLLINS: Thank you. The next speaker is Mr. Claude Carbonneau of Millinocket.

MR. CARBONNEAU: Mr. Chairman, Members of the Committee, my name

is Claude Carbonneau. I'm employed by Northeast Bank of Millinocket as an assistant vice president. I wish to express the opinions of our Institution in this matter. Northeast Bank of Millinocket is a commercial institution located in the heart of the contested Land Claims Area. Our institution's general service area includes the Towns of Millinocket, East Millinocket and Medway. For approximately the past five years, we have faced some serious disruptions in our normal business activities as a result of the Land Claims Case. The prospects of a drawn out Court battle would certainly have further adverse implications in the financial community which could eventually touch every individual and business in the contested area. First of all, it is not our intention to defend the merits of the Proposed Settlement as described in Attorney General Cohen's press release of March 13 of this year. As a financial institution in the Claims area, we come here rather to argue for a rapid and just settlement of this Case. We do not believe that it would be in the best interests of this State to proceed with the ordeal of an expensive Court action which could take years to complete and could place the State's financial community under very serious strains. Thus far, the adverse affects of the suit in our service area have been minimized. This has been due in part to the ability of the financial institutions to uncover new sources of funds when more traditional avenues were closed due to the Land Claims. The seriousness of the Claims became dramatically evident to us in the Medway, Maine, Middle School Project. In the mid-1970's, the Town of Medway contracted to build a new Middle School under the existing school funding laws. Being responsible for securing the financing of the project, the Town contacted the Maine Bond Bank seeking long-term financing for its new school

through the next State of Maine Bond Issue. At the outset of the construction period, the Town received a commitment from the Bond Bank to include their request for long-term funds in its next issue. Shortly thereafter, however, the serious nature and impact of the Land Claims Suit was brought to the public attention. Very quickly markets for Maine Bonds evaporated very quickly and the Town of Medway was informed that the timing for the next issue could not be determined. At this point, the Town turned to the local financial institutions for help in meeting their financial needs. Generally in these sizable bond issues, financial institutions seek a bond or loan purchase agreement more commonly known in the industry as a take out from the large Boston or New York Banks. The Land Claims Suit again negated this option, since the Boston Banks were also questioning the marketability of a Medway Bond issue. As a result, they refused to consider a take out. Therefore, Medway was left with a school which was 60 percent complete and no means of financing the completion of the project or the long-term repayment. After some difficult times, a solution was reached through the cooperation of private investors and our Northeast Banking system. This solution did allow for completion and financing of the school but not without some serious obstacles and additional cost to the Town due to the Suit. The bond holders in this instance invested in the issue due in part to their belief that a negotiated Settlement could and would be reached. It is our opinion that it would be far more difficult to find the investors and banking institutions willing to participate in this type of project with the Land Claims Case to be settled through litigation. More recently, serious problems have arisen in the areas of municipal short-term financing or tax anticipation loans to our communities. Mr. Ayoob just alluded to

some of these. After the Land Claims Suit was brought to light, we again observed some increasing reluctance in the Boston money centers to purchase portions of the tax anticipation notes of our communities. In this case, the Boston money centers were unable for lack of demand to resell these municipal obligations in the secondary market. This year our Boston Financial Correspondants informed us that they would not purchase any of the up-coming tax anticipation notes from our service area. As a result, we were faced with the task of obtaining the necessary funds from within our more limited resources or withdrawing from municipal short-term financing forcing our communities to seek financing elsewhere. Fortunately, the resources were available this year and we've placed very competitive bids for the local municipal business. However, in the absence of a settlement, the future of municipal lending in our opinion is not very bright. The Land Claims Suit has also had an impact on the real estate mortgage market, both consumer and business. For some time now we have been unable to obtain a clean unqualified title opinion on all real estate in our area. Legal firms are citing that clear title cannot be certified until the Land Claims Case is resolved. Most mortgage lenders including Northeast Bank of Millinocket have chosen to continue extending these types of loans, accepting the qualified opinions as a reasonable business risk. This decision has been based upon the on-going negotiations in the Case and the reasonable prospects to a settlement to this problem. What would happen to the mortgage market if this Case proceeds to litigation is very unclear. Certainly, as in Mashpee, one possibility would be a freeze on mortgage lending in the affected areas. In any event, it would certainly be safe to state that if an out-of-Court

settlement cannot be reached, the home and commercial mortgage markets will suffer some serious consequences.

In conclusion, it is not our intention to question the validity of the Claim or the merits of the Proposed Settlement; however, based on our most recent experiences, we do strongly support a negotiated Settlement. We firmly believe that proceeding to litigation in this matter would not be in the best interests of the individual citizens and communities in the affected areas and of the State of Maine as a whole. In our opinion, the difficulties and sufferings which could face citizens and communities alike in the event of litigation far outweighs the uncertain benefits which may result from this course of action.

Thank you.

SENATOR COLLINS: Thank you, Mr. Carbonneau. The next speaker is Mr. John Colgan.

MR. COLGAN: Mr. Chairman, Ladies and Gentlemen of the Committee, my name is John Colgan, I'm the executive secretary for the Millinocket Chamber of Commerce. I represent roughly 85 to 90 businesses in the Town of Millinocket. The Settlement Act of 1980 or whatever it's called, I wasn't asked to come down here and rule on the pros and cons or whether the vote was legal with the Indian Tribes or where we're doing this or that. I was asked to come down here to convey the message from the Chamber of Commerce that we have quite a lot involved in the Town of Millinocket. There is a strong feeling there that if this is not settled and this cloud taken off the State of Maine, that we're in for deep trouble. There seems to be a feeling that if it goes to Courts, the repercussions might be quite great, per se, movement of raw material

from the field to the plants. This would have a very strong repercussion on the Millinocket Area, East Millinocket and every mill in this State. Now, we have a labor force, Millinocket, East Millinocket, Portage of Nashville, of 4,500 people and that's not including the service people that come in from the Southern part of the State, our sales people selling parts and equipment, all the equipment we've got. That doesn't also take into consideration the contract logging service people, independant contractors that sell wood to Great Northern, which some of you know is a considerable amount. This is--they told me to keep this very short, by the way, they told me I wasn't a politician so keep it short and I told them I would. This is about the message the Chamber of Commerce wanted me to send down to you. We firmly believe that this package should be accepted as is. Thank you.

SENATOR COLLINS: Thank you, Mr. Colgan. The next speaker is Gerald Talbot of Portland. While we're waiting for Mr. Talbot, I'll call on the next speaker, Robert Chafee of West Gardiner.

MR. CHAFEE: Senator Collins, Representative Post, my name is Robert Chafee, I live in West Gardiner and I am here today in my capacity as the Executive Director of Maine Forests Products Council. The Forests Products Council represents some 670 members. Those members are large and small landowners, loggers, truckers, processing mills, both large and small, all over this State. Approximately half our members either own land and resources, operate on the land or resource or run a processing installation requiring some of the resources which are in this disputed area. I'd like to urge your support of this LD and say simply that if any of us had doubts before about the large cloud that's been hanging over the State of Maine, I think everything that's been said today reinforced the fact

that there's a very large and very dark cloud over the State of Maine and LD 2037 represents one opportunity to get a little sunshine through and dispell some of the shadows. Thank you very much.

SENATOR COLLINS: Question.

REPRESENTATIVE STROUT: Did you take a poll of the landowners that you represent or is this just your opinion?

MR. CHAFEE: I was contacted by the Executive Committee. The overall Council has a Board of Directors. Ten of the Members of the Board are also elected as Executive Committee and we contacted them this morning.

REPRESENTATIVE STROUT: But you have not taken a poll of the full membership.

MR. CHAFEE: No, in fact, our legislative operations as--altogether are done through the Board of Directors and we notify members and they work through the Board of Directors.

SENATOR COLLINS: Thank you, Mr. Chafee. Is Gerald Talbot in the room? If not, we'll return to our list of opponents and the first name I has is that of Barry Tyne of Township 3.

MR. TYNE: Ladies and Gentlemen, my name is Barry Tyne. I live in Township 3, Northern District in Northern Hancock County, which is on Nicatous Lake, right smack in the biggest green area on the map. My wife and I run a sporting camp on Nicatous Lake and we make our home there with our two children. I'm also the president of the Nicatous Camp Owners Association which is comprised of approximately 50 members and we're within a half of mile of West Lake on which there are some 65 camps. Some information material was given to me published by the University of Maine just to show you that if you're not acquainted with the area that unorganized territory

is not necessarily completely in the boondocks and out of sight of the greater population of the State. In 1963, the University of Maine had a publication, Recreation and Timberland Management, right in our area called the Passadumkeag Area and within a 50 mile radius of West and Niatous Lakes at that time there was some 206,000 people, projected in 1976 to 230,000. So any settlement in this area would affect a great many people not just the few of us back in the woods.

I guess I would first like to tell you why I'm here and the reason for my concern. The first that I heard about this was in a publication of the Bangor Daily News on March 14th showing a front-page picture of our lake and two camps of our members--belonging to two of our members. In that article it said, "also included in addition to the 300,000 acres was this Niatous Lake Area." That turned out to be inaccurate that that would be part of the 300,000 acres but nevertheless, it kind of got the adrenalin going. In that article it was also mentioned that there would be certain changes in the hunting and fishing laws, principally subsistence fishing. On March 16th, still not having heard anything from representatives or paper company landowners right around us, we read that the Penobscots had approved the Settlement. Apparently they had information long before our people right in the area did and most of the other people in the State and I don't fault them for that. On March 17th, House Speaker Martin defined the area some where above Newport, below Houlton and between Quebec and New Brunswick, which really didn't narrow it down too much. On March 18th in the Bangor Daily News, Deputy Attorney General Patterson was quoted as saying and I have all the quotes here but in essence was quoted as saying the land subject to the Settlement Agreement

would definitely be filled in before it was submitted to any Legislative Body for vote and that it was very important for both the Indians and the non-Indians, especially the people in the area. On March 18th, I attended the address by Attorney General Cohen at the Senate and at that time he said that a map will be available, I believe, that afternoon. I left my name on a list and I got a synopsis of the Proposed Settlement but was advised that the map was not for public release so we still did not know where we stood. I spoke to Deputy Attorney General Patterson right after that hearing and he was in a rush to get to the House but when I mentioned that I was from the Niatous Area, he said, "Niatous, where is that?" It didn't ring any bell with him. So it made me worried and it made a lot of people in the area worried that we were just being passed right over. Now we can see from the maps that actually and truly Townships 3, 4, 39, 40 & 41 are in the Proposed Settlement Area and it'll have a direct effect on us. I'm not here to speak about sovereign rights or the advisability of a Settlement at all. I believe that there should be a negotiated Settlement but I believe that before you are not always esoteric arguments but LD 2037 and I believe that's what should be examined. I received a copy of it today. I am primarily concerned with the regulation of fish and wildlife resources and subsistence fishing. What in heavens name do we have subsistence fishing and hunting in 1980? That might have applied to Indians and non-Indians alike 200 and even 100 years ago. Today not only with all the Federal Programs, the wages paid in private industry but in addition, the money Settlement and the income from that Settlement would give no justification at all to someone to go out and claim that he had to shoot three deer or catch 22 fish on Tuesday in order to subsist. It

doesn't make sense. Subsistence fishing, I believe a question was directed by Representative Pearson that there are controls. Well, I ask you to examine those controls; that those--the Commissioner, from my reading of this document, can only step in after repeated surveys request for the Indians to shape up or desist on certain practices and as the fellow from the Atlantic Salmon Fisheries said, it might be too late and it could be too late. These things could take years to bounce back and forth before a lake is fished out and then his power of authority--anytime you pass a law, you have to be able to enforce the law--the enforcement powers only apply when what is outside the territory of the Indians is affected. So Nicatous Lake could be drained, the fishing--the hunting in the area could be ruined. I'm not saying it will happen, I'll say--alright, I'm not saying it'll happen but I'm saying that the only time the Commissioner can do anything is if he finds that waters out--sticking with the fishing--outside that area are affected. So if the Passadumkeag River is not affected--the Salmon don't go down the Passadumkeag River, the Bass don't go down--who will enforce this supposedly check on improper practices? Nobody. They can't under the law as it's written.

I'd also define what sustenance is. Sustenance in the dictionary that I have at home says, "sustaining life or nourishment," second meaning, "means of livelihood." That means they could be a professional hunter and fisherman and sell their game. The Governor was quoted in the papers as saying that he's all for equal rights, regardless of race, religion, color and so forth. How can anyone say that the law is equal and applies equally to all when 200 yards from my home, I have to hunt

two weeks or two and a half weeks out of the year--I have the right to be in the woods with a gun when people with two legs, two arms, no better, no worse than I am, can hunt all year long and claim they're sustenance hunting. There are many poor people in this State who could sustenance hunt and there's no exception made for them because everything would go hog-wild. It would be unenforceable. So how can we pass a law knowing that very importance provisions--at first blush it might seem that hunting and fishing, blah, it's just a little segment of this whole thing. It's a very big segment in the State of Maine and it's a very big segment to the people of this State and in this particular area. I believe and there are many people here, Indians and non-Indians alike, who say this law is not fair, that people are not being treated equally and I agree with all of them. The law doesn't treat people equally and it does, in effect, establish a nation within a nation. The laws should apply equally to all people legally within the State of Maine and I believe that any law passed should try to avoid these pitfalls and there's a simple solution to it. Not an easy one, but a simply one. All the newly acquired land should come under the general laws of the State period. That's it. Thank you very much.

REPRESENTATIVE PEARSON: Mr. Chairman, could I ask a question?

SENATOR COLLINS: Yes.

REPRESENTATIVE PEARSON: Mr. Tyne, is your land in jeopardy, where you have your lodge and your cabins?

MR. TYNE: Is my land in jeopardy? Indirectly, yes.

REPRESENTATIVE PEARSON: Do you own--

MR. TYNE: I own the land in fee simple but I earn my livelihood

from that land. If paying customers are prohibited from hunting or fishing or if there is no hunting or fishing in the area, I fold and I lose my land.

REPRESENTATIVE PEARSON: Mr. Chairman, I think that some of the questions that he has raised, in my opinion, you can do what you wish because you're the Chair, but I think that I'd like to have John Patterson addressed the questions that he's asked about, how rapidly you could address the problems of over hunting, over fishing, what is sustenance hunting and that sort of thing, if it's permissible.

SENATOR COLLINS: I think we do want to have Mr. Patterson address those. I do have one or two others who have an urgent time schedule that I have agreed to hear, though, and then we'll call on Mr. Patterson. I'd like at this time to call upon Neana Neptune of the Penobscot Nation.

MS. NEPTUNE: My name is Neana Neptune and I am a member of the Penobscot Nation. I am half Penobscot and half Passamaquoddy and I have lived most of my life on the Penobscot Reservation, Indian Island. I am very proud of what I am and who I am but what I have seen here today makes me very sad because what I have seen in your eyes and what I have felt from you people has been prejudice. What I have heard here from some of the speakers is typical of what has gone on for years. People can deny the prejudice, they can deny the feelings and you may not even be aware of them but what I have learned over the years--and I am 32 years old, I'm not a little kid--I've learned a lot in my life, I've been through a lot in my life and I've learned a lot of things through experience. I've lived in my world on the Reservation and I've lived in your world out of choice. But what I have seen is a society that has learned that Indians are no good, that Indians are beneath the white man. I have heard

it in the speakers here. We have been called remnants by the man from Hancock County, Mr. Wiggins, we have been called dissidents because we don't believe the same way that other people believe and I just had a young girl ask me, "what does dissident mean?" And what I see that it means is that if you don't go along with what people around here think, the majority of the people think, then you are labeled a dissident. People on the Reservation have been labeled traditionalists. We have been marked dissidents because of what we believe in, because of what we are trying to fight for and that was our freedom. We do have rights but because we are a minority and because of this society around us and the beliefs that have been instilled in you people, it's there, I know it's there and I don't believe that some of you can really help it. Maybe some of you people aren't even aware of it. We choose to live on the Reservation. I don't live on the Reservation now because I am single and I am not eligible for the housing because I don't have any children and I'm not married and there is no housing on the Reservation for single people. But I have lived on the Reservation because I wanted to. I have a father who lives in Connecticut and some day when he retires, he wants to come back home and he wants to come back to his home and you people sitting have a right to take that away, so you're taking the right. You've heard a lot of opposition here but what I have heard is a lot of prejudice, a lot of negative opinions about Indians, I've heard people say that we are not a Tribe. And I learned as a child that I was a Penobscot Indian and a member of the Penobscot Tribe and I don't know who has the authority to say or who has taken the authority to say that we are or are not a Tribe. My people have come here to state their opinions, to state their feelings and

we have tried that with our own Governor and our own Council and it went to deaf ears. My people that have been here to speak were granted a time limit and any non-Indians that have been here, they could speak as long as they wish and that does upset me. I was told by Senator Collins that everything was repetitious. It may be repetitious and what I am hearing from other people, non-Indians, is repetitious. It's gone on over the years, the opinions and the beliefs as far as Indian People are concerned. I cannot open your minds and I cannot open your hearts and a lot of people, a lot of my people from the Reservation are very saddened about this Proposal that's going to go through. There were a lot of questions that people had as far as this was concerned and we were not even given the right to question those. We weren't even granted the right to be heard. I cannot—I see so much in your faces and in your eyes and I can feel feelings from you people. I am sensitive to that. I've learned that over the years and I know what is in your hearts and it saddens me. Senator Collins said, "don't forget, we are people." Well, I'm asking you people not to forget that the Penobscots, Passamaquoddies, the Maliseets and also the MicNaks are people too. Our only problem right now is that we are a minority and there's nothing that we can do about that. You have all trained, you've all been taught certain beliefs, certain ideas, and I feel like the Indians are being shoved under the table to get them out of the way and that's the way it's been over the years and it's just as frustrating here as it has been with our own Governor and Council. I do feel, though, that I have been given the right to speak where I have not had the opportunity to speak when we were on the Reservation and we had our meetings. Because we do live in a dictatorship and there are problems on the Reservation. A lot of internal problems that this Proposal

has brought about. But I know of one man from the Reservation and the rest of us are all labeled dissidents and this man is a very respected member of the community. There are a lot of respected members of the community that have joined us against this Proposal and I don't call them dissidents. I don't call myself a dissident and I don't call anybody else a dissident who disbelieves what I believe and I don't believe that anybody has the right to label me because of what I believe in or because I don't believe what you believe. I hope that all of you people sitting here listening can go home and look within yourselves, honestly take a look at yourselves and see the prejudices and biases that you have picked up in this society as far as Indian people are concerned. Some of this is so engrained that you don't even know, that you aren't even aware. I hear it in the speakers that have already been up here. I've heard it at the jobs that I've worked at. I see it in the eyes and I hear people say, no, no, no, I'm not prejudice but I can feel it and I can see it but the problem is that person cannot see it or will not admit to it. I don't know if any of you people have a conscience but my people have rights too. We have a right to be heard and we have a right to respect for what we believe in, for what we're fighting for and I don't believe that anybody has a right to label any of us because of what we believe in. That's all I have to say.

SENATOR COLLINS: Thank you, Miss Neptune. Our next speaker is Francine Leevy Murphy. I'm not sure if I've pronounced the last name correctly, it begins with M. Is Francine here? The next person on our list is Francie Murphy.

MS. MURPHY: My name is Francie Murphy and I'm a member of the Penobscot Tribe and I live on Indian Island. I really don't have much to say, I think Neana has said most of it all for everybody but I'd like to say this, if we ever had to take that vote over again, I'd vote no. Thank you.

SENATOR COLLINS: Thank you. Our next person is Alberta Francis. The next person on the list is Frederick R. Lark of Middletown, New York.

MR. LARK: Thank you. My name is Frederick Lark, I reside in Middletown, New York, I also have a lease in Township 41. I'd like to say a few words for the leasees that are going to be involved in this transaction.

A little earlier, Mr. Tyne made reference to first finding out about the proposed takeover of Township 41 when he saw a picture of a camp in the paper. Well, that was my camp and I didn't like that much, okay, and I dislike the whole way the thing is being handled. First, this is the method in which I find out what's happening to my property. After all, whether it's leased or not, it is my home. It's not my principal home but still, I selected it, I wanted it, I paid for it and we maintain it as we go along and to all of a sudden be told, well, now you can't have it any more or it's our intention that you will be able to keep it in the future or the paper company might tell us, it's our intention not to divest ourselves of this land. Well, the land is on the map and everybody's going to forget about everything that happened here today probably, they'll still have the map and it says that the land is gone and somehow this doesn't seem to be the right way to handle this. As leasees, we invested our money in the State of Maine, whether we're from Maine or not and we come here

because we like it here. This whole deal is not the right way to handle it. I'd like for all the leasees, if someone can tell us where we stand. If you want us all out of here, tell us, everybody get out. If you want us to stay, then let us know where we stand. Will we retain our camps when all of this is over or won't we. They say, well, our intention is that they can keep it but I don't have anything in writing. Tomorrow you can say, well, our intention is today to change our mind. You know what they say about the road to hell. Paved with good intentions and everybody seems to have good intentions. They have good intentions to the Indian Nations. I don't think anyone is trying to hold anything against the Indian Nation. It seems like the whole thing is being rammed down the Indians' throats, the way they explain it here today. You have no controls over this whole operation. You say, well, we have the environmental controls. The Land Use Regulatory Commission will regulate how people can build up around a lake. Chances are what will happen, after everything is ruined, you'll say, well, gee, we made a mistake. We should have changed things before and then it will be too late. Being from New York, I saw what happened to the Hudson River. When I was a kid, your parents would have skinned you alive if you went swimming in the Hudson River. Well, today, it's coming back. But we shouldn't have to do that here in the State of Maine. You've got good waterways and you should be able to keep it that way and I think you have to put in sufficient controls. The way the Bill reads as I can see it, there are no controls. We'll just do it and then whatever happens later, we'll worry about that later. That gets Maine off the hook and the Federal Government can worry about it. Nobody cares whether it's a good law or whether it's fair to anybody, let's just get

see with the passing of this Proposal is to legally extinguish our identity and our rights as a sovereign people. Thank you.

SENATOR COLLINS: Thank you. This concludes our list of those who signed up to speak. Have I missed anyone or is there anyone who has come in whose name was called? If not, we will then try to meet a few of the questions--excuse me, Mr. Flagg.

MR. FLAGG: Mr. Chairman, I'd like to just make a short statement if I could, relative to our concerns. I would want to impress upon the Committee that we only saw the Bill this morning and really haven't had an opportunity to look at it in depth and I would like to say that many of our concerns may already be addressed in other areas of the Bill and so, therefore, our concerns may be premature and we'd be happy to talk with the Committee about them at a later time.

SENATOR COLLINS: Thank you, Mr. Flagg. Mr. Patterson, would you take some questions or Mr. Cohen. Some members of the Committee have particularly asked that we try to address some of the questions about salmon and fishing and so on and there may be some others. Do you wish to comment, Mr. Cohen?

ATTORNEY GENERAL COHEN: I have one particular point and not to stand on protocol, Mr. Chairman, but then Mr. Patterson can respond if that's alright, regarding the concerns about sustenance fishing and also the Atlantic Salmon and the depletion of resources. Mr. Patterson will address that. I just wanted to make one point regarding what Mr. Libhart indicated earlier. Unfortunately he's gone. He approached me during the lunch break and either he misunderstood me or I misunderstood him as far as the applicability of the colonial ordinances regarding the laws here.

There's no question about it that the right of access to great ponds is intact and guaranteed under the LD that's now before you. I wanted to make that absolutely clear. There's no question about that at all.

On the sustenance fishing and also regarding the concerns that were raised by Marine Resources that I don't believe concerns Mr. Patterson, we'll explain those.

SENATOR COLLINS: Just a minute, please. Mr. Attorney General, one more question.

REPRESENTATIVE POST: Could you just clarify on what basis the access to the great ponds still exists?

ATTORNEY GENERAL COHEN: Well, the common laws are still applicable and §6204 specifically refers--which would generally refer to Colonial Ordinances also and, therefore, guarantees the access to great ponds. Specifically, in that paragraph, shall be subject to the laws of the State on the one, two, three, fourth line which includes the common law and so there's no question about that particular point.

REPRESENTATIVE POST: So under that interpretation, it includes the common law?

ATTORNEY GENERAL COHEN: That's correct, yes. Right and that's under--on Page 3, Sub-§4 where it specifically includes the common law.

SENATOR COLLINS: Mr. Patterson?

MR. PATTERSON: First, with respect to Mr. Flagg's comments, it's not his fault that Mr. Flagg didn't completely understand it. We've been in the process of discussing this and briefing a variety of state officials that have been around and we simply haven't had an opportunity to talk with everybody yet. Mr. Flagg expressed concern about two items, first of all, regulation

of marine resources in coastal areas. Under the Bill, the only areas within the Indian Territories along the coast would be the Pleasant Point Reservation. There is no other green area or red area along the coast of Maine that would be within the Indian Territory. Within Pleasant Point and the Coastal Area adjacent to Pleasant Point, the Passamaquoddy Tribe would have the same authority that any other municipality does to regulate marine resources. I believe that is limited solely to the enactment of shellfish conservation ordinances and as in the case of any other municipality, a shellfish conservation ordinance has to be approved by the Commissioner of Marine Resources so in that respect, the Passamaquoddy Tribe in the regulation of marine resources would be on the same footing as any other town in the State. To the extent that either Tribe buys any other coastal land anywhere else in the State, and, of course, they are free to do that just as you and I are, they would have no other rights in that coastal land other than what you and I would have.

With respect to the comment about Donnell Pond, I believe Donnell Pond is more than ten acres in size, therefore, it would not be subject to Tribal regulations. It would be subject to regulation of fisheries by the Tribal State Commission. The State's interest, therefore, would be protected by its participation in that Tribal State Commission. In addition, any ordinance that the Tribal State Commission might adopt would be subject to the continuing residual authority of the Commissioner of Inland Fisheries and Wildlife. Now, the Commissioner of Inland Fisheries and Wildlife doesn't have to wait until some harm occurs. Under the Bill as drafted and as agreed to, beginning of the bottom of Page 9 and going over onto Page 10, particularly on Page 10, the Commissioner can act when he finds that harm is

occurring or when he finds that there is a reasonable likelihood that a Tribal practice will cause harm. Not only can he act when he finds that a Tribal practice will cause harm but when he finds that the lack of a Tribal Ordinance, for instance, the failure to enact a particular protective ordinance on the part of the Tribe, he can then step in and exercise his residual authority to enforce normal state laws.

With respect to the comments of the gentleman from Nicatous Lake, Mr. Tyne, I believe his name is, specifically his comments were directed toward the right of the members of the two Tribes to engage in sustenance hunting and fishing. First of all, it should be clear that reference to sustenance fishing occurs in two places in the Act, in 6207, Sub-\$1 appearing on Page 8 and on 6207, Sub-\$4 on Page 9. In the first instance, the reference to sustenance hunting and fishing is used with respect to the adoption of Tribal Ordinances. Now, remember that the Tribes can adopt ordinances with respect to hunting and with respect to fishing but only on ponds of less than ten acres in size. Those ordinances have to be equally applicable to Indians and non-Indians except that the Indians can make special provisions for sustenance hunting by their members and thereby draw a distinction between Indians and non-Indians. The second provision with respect to sustenance hunting--before I go on to that, that provision would not apply to Nicatous Lake. Nicatous Lake is more than ten acres in size and the Tribe in any event would not have authority to adopt regulations on that Lake. With respect to a Lake like Nicatous, which is more than ten acres, the Tribal State Commission would have jurisdiction. Any regulation regarding fishing would be enacted by the

Tribal State Commission. The nine member Commission, four members of which are representative of the Tribe, four which are appointed by the Governor and the ninth is appointed by the other eight from a retired justice of the Maine Supreme Court or the Federal Court. The Tribal State interest in that is equally shared. The regulations of the Tribal State Commission as applied to Naticus Lake would not apply with respect to sustenance hunting by Indians or rather, sustenance fishing by Indians except that such right of sustenance fishing is subject again, like the other rights that the Tribes receive, to the residual supervisory authority of the Commissioner. If you look at the bottom of Page 9, Sub-§4, it says that sustenance fishing within Indians Reservations. This provision about which the gentleman expressed concern is on its terms only applicable to the Reservation which is only the red area shown on that map, not all the green area. Second of all, it is, as you can see from the last line, subject to the limitation of Sub-§6. If you go down to Sub-§6, that's the section which gives the Commissioner of Inland Fisheries and Wildlife supervisory authority. Now, as I said before with respect to Donnell Pond, the Commissioner of Inland Fisheries and Wildlife does not have to wait until harm occurs in any of these instances. If he finds that harm is occurring by virtue of a Tribal hunting or fishing regulation, he first notifies the Tribe, attempts to resolve it amicably with them, if that fails, he calls a hearing, takes evidence at that hearing and he can, if he finds that harm is occurring, rescind the Tribal Ordinance or the Commission regulation and apply usual state laws. In addition, if he finds that a Tribal practice or the lack of a particular Tribal limitation is reasonably likely to cause harm, he

can also step in and apply usual state law. Let me give you an example. Suppose there is a particularly sensitive lake that had previously had prohibitions on the use of live bait, the Commissioner could go to the Tribe and say I would like you to enact an ordinance prohibiting the use of live bait in this lake because the use of live bait presents particular harm to this fishery and also the fisheries with which it's connected, the Grand Lake Stream Area, for example. The Tribe could enact that ordinance and the concern is met. If the Tribe doesn't enact that ordinance and the Commissioner believes that the lack of that ordinance creates the danger of the fishery being damaged, he can call a hearing and he can impose that regulation himself under usual state law.

REPRESENTATIVE POST: Just to clarify in my own mind and perhaps in the minds of some other people since this is an issue that we've had a lot of discussion and a lot of questions about, the only time that the §4 on Page 9 applies, and that's notwithstanding any regulation, sustenance fishing within the Indian Reservations may take place on Indian Reservations.

MR. PATTERSON: Yes. That's a good point. As to Nicauous Lake, that Sub-§4 doesn't apply. Nicauous Lake is not within the Reservation.

REPRESENTATIVE POST: And as far as sustenance hunting and fishing on the other Indian Territory, either totally within the Indian Territory or on ponds of ten acres or less, the sustenance hunting--the privilege of sustenance hunting has to be defined by an adopted ordinance?

MR. PATTERSON: That's correct.

REPRESENTATIVE POST: It doesn't mean that they can go out--that an individual can go out and take 20 deer a year but the ordinance has defined may be taken under that provision?

MR. PATTERSON: Yes.

REPRESENTATIVE POST: Okay. Then the concern that I do have and maybe the provision of the Commission may be sufficient, I do have a concern on the fairly detailed procedure that one has--that the Commissioner has to go--the Commissioner of Inland Fisheries and Wildlife has to go through in terms of taking remedial action. Perhaps there are not that many areas totally within the Indians Territory that we have to worry about those kinds of occurrences happening but could you tell me, in terms of--on summary here on Page 10, the Commissioner may--it's about halfway down the page--may adopt appropriate remedial measures including rescission of any such ordinance or regulation and in lieu thereof order the enforcement of the generally applicable laws or regulations of the State. Is that--does that include, since that language talks about generally applicable laws and regulations, does that include the fact that the Commission could enforce specific regulations that may be adopted by the Altantic Salmon Commission because those are not necessarily laws but they may be to a specific area, either a closed area or a specific season for an area but they're not necessarily general regulations of the State.

MR. PATTERSON: Well, they're general in the sense that the Commission has general regulatory authority which it can exercise in specific ways. Yes, I would say that that falls generally within the language of generally applicable laws and regulations of the State.

REPRESENTATIVE POST: So, what would happen is that the Commission would promulgate a regulation and that could be done under their emergency powers and then the Commissioner of Inland Fisheries and Wildlife would

have to enforce it if he found necessary?

MR. PATTERSON: They could not promulgate the specifically applicable--particular regulation until the Commissioner of Inland Fisheries and Wildlife first took some act to supercede whatever Tribal ordinance existed or Commission regulation existed.

REPRESENTATIVE POST: Well--

MR. PATTERSON: The first step would be action by the Commissioner of Inland Fisheries and Wildlife to notify the Tribe to hold a hearing and then to supercede whatever activity was going on on the Tribal Lands and then to tell them--or to make these, for instance, the Atlantic Salmon Commission free to then exercise its general authority in that area.

REPRESENTATIVE POST: So it would be the Salmon Commission that would be adopting the regulation then.

MR. PATTERSON: Yes, you'd then go back to whatever the generally applicable law of the State is.

SENATOR COLLINS: Representative Gillis.

REPRESENTATIVE GILLIS: On this same line as Representative Post has been on, when the Commissioner comes across something that he believes is adversely affecting the fish and the wildlife and so forth, does he have the authority to take immediate corrective action and then go to the Tribal State Commission?

MR. PATTERSON: No, he does not. He has to consult first with the Tribe or the Commission, depending upon who has jurisdiction. You always have to keep in mind that there are different jurisdictions. For hunting, it's the Tribe and for small ponds, it's the Tribe. For rivers, streams and large ponds, it's the Commission. The first step is to consult,

second step is the call a hearing, the third step is to act if he finds sufficient grounds to act.

REPRESENTATIVE GILLIS: This condition could exist for months, maybe years, before it's resolved.

MR. PATTERSON: Well, it depends how fast he wants to act. There are no particular deadlines set in here for notice, adequacy of notice. So long as it's reasonable notice.

REPRESENTATIVE GILLIS: But he does not have the authority to take immediate direct action.

MR. PATTERSON: No, he does not.

SENATOR COLLINS: Senator Redmond.

SENATOR REDMOND: Mr. Patterson, the State denies to the municipalities the right to promulgate to make any regulations regarding the fisheries and the wildlife in their own municipalities. That question has come up several times on the Committee on Fisheries and Wildlife and now as I understand it, in these areas that we are discussing today, the Indians will have the privilege of passing their own regulations in those areas. Now, isn't that discrimination against the white man, to disallow him to pass his own laws in his municipalities and allow another group of people to be able to do that?

MR. PATTERSON: Well, let me answer that in part and then ask the Attorney General if he wants to respond to it. First of all, the State currently lets Indians and the Legislature currently lets Indians engage and regulate their own hunting and fishing on their on reservations. That's a current state law. That's in Title 12, §7076. That was a right which the State gave to the Indians on their reservations some years ago.

So in large measure, the policy embodied here was long ago recognized by the Legislature of the State. That's why the right to sustenance hunt and fish on reservations which is found in Sub-§4 on Page 9, is not such a major departure from current policy. As to whether or not that's discriminatory, the entire Act represents a compromise in many respects. This is one of the areas in which there was vigorous negotiation. I think as the Attorney General stated quite clearly in his opening remarks and remarks to the Legislature last week, there were certain areas in which the State felt it appropriate in the negotiations to recognize traditional Tribal interests. This is certainly an area in which the State has long recognized as a general matter particularized cultural interests of the Indian Tribes in Maine. Indeed, if you go back to the original agreements that were negotiated back in the 1700's and 1800's, you will find in some of them preservation at that time of particular kinds of hunting and fishing rights. So it is not as if the idea of having these particular kinds of rights in Indians is particularly unique nor is it unique to the State of Maine. As a general proposition, States elsewhere in the country that have Indian Land in those states are unable to exercise their regulatory authority over Indian hunting and fishing practices on their lands. This is a measure of remedial state authority which to my knowledge is not found in any other state in the country and I would suspect that those states which are having controversies with their Indian Tribes would deeply value the kind of authority that we have negotiated in this agreement.

SENATOR REDMOND: Well, basically this sounds very reasonable, however, this question keeps popping up in my mind, this whole issue is-- in order to try and settle this case of discrimination on the one side, however,

this other group are going to very reluctantly accept to be discriminated against.

MR. PATTERSON: What I think people have to try to keep in mind is the fact that this is a lawsuit. We are settling a lawsuit and not trying to decide it's a matter in the absence of the lawsuit that this is good public policy. This represents a negotiated compromise and it has to be viewed from that perspective and not from the perspective of were the slate clean, would we do this.

SENATOR REDMOND: Thank you.

SENATOR COLLINS: Representative Pearson.

REPRESENTATIVE PEARSON: John--Deputy Attorney General John Patterson, I'd like to ask you this question, suppose there has been no ordinance regarding gill net enacted by either one of the Tribes and somebody does that and the fishery stock is in jeopardy because of that, what steps are taken and how fast can they move?

MR. PATTERSON: Well, the point I've tried to make is that you don't have to wait until that occurs. The Commission of Inland Fisheries and Wildlife can go to the Tribes before the fact and say, this is a list of regulations, of ordinances that I would like you to adopt because I think it's necessary to protect the fishery. I would suspect that in most instances, the Tribes share the concern about protecting the fishery. I think that's a genuine concern and I would suspect that in most instances there would be an amicable working out of any problems. If, however, the Tribe objects and does not enact that ordinance or the Tribal State Commission doesn't enact that ordinance, the Commissioner doesn't have to wait until the harm occurs. He can go out and act in the absence of a

Tribal ordinance and can hold if the evidence so demonstrates that the lack of that Tribal ordinance is reasonably likely to cause a harm, that if we permit gill netting to occur, if we don't prohibit it, that there's going to be some harm to the fishery and he can go out himself and take action under normal State law to prohibit gill netting.

REPRESENTATIVE PEARSON: John, in hunting, there's been a concern expressed to me of having children around a pond or a lake or out in the woods where hunting is allowed to occur all year round and you don't know when it's going to occur and concerning the safety of the children and for themselves, for that matter. How would you answer that kind of a concern?

MR. PATTERSON: The Act requires that, on the bottom of Page 9, that lands and waters subject to regulation by the Commission or either Tribe shall be conspicuously posted in such a manner as to provide reasonable notice to the public of the limitations on hunting, trapping, fishing or other use of such lands and waters and while there was recognition of the fact that people needed to be on notice if we're going to have different kinds of legal schemes around, that they were going into an area where a different legal regime applied.

REPRESENTATIVE PEARSON: Well, let me put it this way. There's a cottage on a pond that for one reason or another, leased or bought or owned, or whatever, this family goes to and the kids play out in the yard and it's completely surrounded by the Indian Territories in which hunting is allowed all year round. What protection would that individual have from a stray bullet or whatever?

MR. PATTERSON: Well, I suppose he has no more protection from a stray bullet than I have in normal hunting season in walking down a road.

I don't know as you can legislate against stray bullets.

REPRESENTATIVE PEARSON: It would just be a hunting season all year round that you would always have to be concerned about, is that it?

MR. PATTERSON: Yes.

REPRESENTATIVE PEARSON: Just one more question and I'll be through and that's on Page 3, I think. It involves Niatous Island. I understand that when I first became a Legislator that Niatous Island has--well, first of all, Niatous Island is the Island where the East Branch and West Branch of the Penobscot River come together and if you're going North on the Interstate and you look over on the lefthand side, it's the Island that you see. I understand that the Governor of the Council some time ago transferred that land to an individual without, at least in some peoples' opinion, due process. What is the status of that Island under this Bill?

MR. PATTERSON: The Bill contemplates that with respect to the Penobscots, any Island reserved to them by 1818 remains a part of their reservation unless since 1818 and the date of enactment of this Bill, it has been transferred out of Tribal ownership, in which event, any Island including Niatous Island would remain the property of whoever owns it, whoever had it as of the date of enactment of this Bill. With respect to any Island including--with respect to Niatous Island, however, if the Tribe subsequently reacquires it, it becomes a part of the reservation again.

REPRESENTATIVE PEARSON: Thank you, John.

SENATOR COLLINS: Representative Dow.

MR. PATTERSON: Can I interrupt for just a second? By the way, there is an error with respect to the definition of the Passamaquoddy

Indian Reservation which both Mr. Tureen and I have noticed was an omission. The definition of the Passamaquoddy Reservation fails to include Pleasant Point and the parties will jointly take care of proposing to you a technical amendment.

SENATOR COLLINS: Mr. Dow.

REPRESENTATIVE DOW: I was going to ask you a question on the land that might be sold. Before we enact this Bill, will we know in fact what all of the landholders that are now in the process of selling, if they are going to be selling, what they're going to do with the lease land if it's going to be offered for sale to the camp owners?

MR. PATTERSON: Not by the terms of this Bill you won't. There's nothing in here that makes that a pre-condition to the effect of this Bill.

REPRESENTATIVE DOW: And we won't have it just for general knowledge of the Committee either at that time.

MR. PATTERSON: You're certainly free to solicit that, in fact, we have solicited from the companies and the Tribes a list of all lands which are under negotiation. There's been some flux about that and we've tried to produce maps which are always up to date. We have also solicited from the landowners a complete inventory of any leased lots which would be on their land which would be proposed to be sold.

REPRESENTATIVE DOW: But we won't know whether all of them, all of the landlords want to sell or what's going to happen to that piece of property.

MR. PATTERSON: That's right. There's nothing in here that prohibits that in any way. We operated on the foundational principle that

the Tribes are free to do with their money as they wish the same as anybody else and they can go out and buy land just as you or I can. The only areas in which we particularly defined lands in this Bill are any lands which might be in their territory and would thereby have a particular legal status. Other than that, the Tribes are free to go out and buy land and they have no particular rights on those lands any more than you or I do.

SENATOR COLLINS: Representative Post.

REPRESENTATIVE POST: On the transportation of game section on either fish taken within the Indian Territories or water subject to Commission regulation on the transportation of game, I understand with the game they have to be registered pursuant to ordinances adopted by the Passamaquoddy Tribe and the Penobscot Nation but does that mean that game--if in fact there are no registration stations in each section of the Indian Territory, does that mean that game can be transported between one section of territory to another which has not actually been physically registered if the ordinance that has been adopted allows that?

MR. PATTERSON: Yes, I think it would. It's not much different from the problem now, I think you have, where you have only in the State a limited number of game registration stations around the State. I don't think that we would expect that there would be a game registration in each particular parcel of that green land, though this hasn't been worked out in detail.

REPRESENTATIVE POST: I think the difficulty is--I mean, now, we only have a limited deer season but we're talking about trying to enforce in the off-season for the rest of the State, not killing and

transporting game and it seems to me that that would put a burden on the Inland Fisheries and Wildlife Department as far as their enforcement of off-Indian Territory laws go.

MR. PATTERSON: Well, I think you have to look at that question in a case by case basis. If, for example, in June of the year a member of the Passamaquoddy Tribe were found off Indian Territory with a deer in his or her possession, the State enforcement officer would presumably inquire of that person where they got the deer. If they could demonstrate some registration tag indicating that it was taken on Indian land legally, they would then be free to go on their way. If they didn't have a registration tag, it would then be a judgmental decision in which the officer would have to make as to whether or not he thought that person was, in fact, telling the truth and issue a summons to that person. For example, if the person was found coming immediately off the land in which there was no registration station, it would probably be reasonable to conclude that, in fact, the deer was caught on Indian Land or shot on Indian Land and, therefore, was shot legally. If, however, the person is found with a freshly shot deer up in Northern Aroostook County and there's no Indian Lands around, I would presume that, in fact, the deer was not shot legally and would issue a summons. In the final analysis, that would be a matter which the Court would have to decide after that person was summoned into Court. If the Tribal member contended that he shot it legally on Indian Land in a legal Indian Season, that would be a matter of fact for the Court to judge and those kinds of factors would come into play.

REPRESENTATIVE POST: Either with Indian People or non-Indian People, if, in fact, hunting is allowed on those areas, it seems to me

that it might present some real enforcement problems in our off-hunting season.

MR. PATTERSON: If I were administering this for the Tribe, I would want to insure that to the maximum extent possible there was a registration station on each parcel so that a member of my Tribe could register that deer and avoid the difficulties of dealing with State Law Enforcement Officers when he was transporting that deer from point A to point B.

REPRESENTATIVE POST: On the--under the ability to adopt ordinances for hunting and fishing licenses, it states that ordinances shall be equally applicable on a non-discriminatory basis to all persons regardless of whether such person is a member of the respective Tribe or Nation. Does that mean that if a license is charged that the license has to be the same for both Indian and non-Indian because it has to be non-discriminatory?

MR. PATTERSON: Yes, I believe it does. The only basis for drawing a distinction for ordinances is with respect to special provisions that the Tribe can enact for the sustenance of the individual members of the Penobscot or Passamaquoddy Tribes. If there was some way in which the licensing was connected with sustenance hunting, there might be a way in which the ordinance could be drafted so that there'd be a difference in fees or licensing. I can't think of an example off the top of my head but it may very well be possible that a distinction could be drawn.

REPRESENTATIVE POST: But if it is not and there are licenses, they have to be the same for either Indian or non-Indian?

MR. PATTERSON: That's right.

REPRESENTATIVE POST: Thank you.

SENATOR COLLINS: Representative Strout.

REPRESENTATIVE STROUT: Yes, I have a question. What part in here--I've been looking through it all day and I'm trying to figure out I guess what part the Maliseets play in this document or will they even after Congress acts. It seems that they're going to be allotted just money or--

MR. PATTERSON: The Maliseets play no part under this Act. The Maliseets have no particular rights conferred upon them with respect to any lands under the terms of this Act. They do appear in the proposed Federal Legislation which the Tribe and the Attorney General's Office have agreed on and they will get some measure of money under that to purchase up to 5,000 acres of land. As currently drafted, that Bill would not give them any particular rights on that land other than any other property owner.

REPRESENTATIVE STROUT: Just land?

MR. PATTERSON: That's right. There would be no provision for Tribal trust--

REPRESENTATIVE STROUT: No trust.

MR. PATTERSON: Right.

SENATOR COLLINS: Any other questions from Members of the Committee for Mr. Patterson?

REPRESENTATIVE POST: Because I have had two questions asked that I've opposed, one is, would you define sustenance for us and does it, in fact, include one's earning a living.

MR. PATTERSON: We didn't just use the word sustenance, we used

sustenance for the individual which we construe as not covering commercial fishing operations. We believe that means consumption by the individual.

REPRESENTATIVE POST: So sustenance is for consumption by the individual and not earning a living.

MR. PATTERSON: Yes. Let me also direct your attention to Page 8, the provision regarding adoption of Tribal Ordinances. The Tribe can adopt ordinances with respect to hunting, trapping or taking of wildlife and taking of fish. That would not cover, we don't believe, a selling or otherwise disposition of it in a commercial sense. Selling of fish is prohibited by State law, selling of deer, moose, caribou, is also prohibited by State law. Under State law there is a distinction between hunting or taking of wildlife or fishing or taking of fish and the disposition of that fish or wildlife afterwards.

REPRESENTATIVE POST: So that the special rights include taking and transportation of those fish taken.

MR. PATTERSON: Right.

REPRESENTATIVE POST: Does it provide exceptions also to general possession laws because that's the way we enforce many of our fisheries and wildlife, that you can't possess--

MR. PATTERSON: Yes, I think it does. Obviously if you can take it, you can possess it.

REPRESENTATIVE POST: I was given a specific example on Atlantic Salmon and that is under Township 24 in which the whole Township is shown on the map. That includes Mopang Stream and it provides a third of the spawning area of salmon for the Machias Stream or River, given the extensive time that it may take for the Commissioner to be able to go through the

process before he can make a finding of harm to a species off the Indian Territory, how would you suggest that that spawning area might be protected if ordinances are adopted one right after another or they may change?

MR. PATTERSON: Okay, let me go through the scenerio again. First of all, that stream would not be under Tribal jurisdiction, it would be under the jurisdiction of this Joint Commission, the Tribal State Commission. State law would continue to apply in that instance as a transitional measure until such time as the Commission decided to adopt some different regulation. As soon as the area around Mopang Streat is acquired, in other words, the State law does not automatically become non-operational. It continues in existance until the Commission affirmatively takes some action. If you'll look about 2/3 of the way down Page 9, you'll see the language, "in order to provide an orderly transition of regulatory authority, all fishing laws and regulations of the State shall remain applicable to the waters specified in this sub-section," that means the water's under the Commission regulation, "until such time as the Commission certifies to the Commissioner that it has met and voted to adopt its own regulations." Now presumably, the Commissioner can play some roll in meeting with the Commission ahead of time and help them shape their ordinances and as I suggested before, can suggest to them, this is a particularly sensitive area. I believe you need an ordinance--a regulation in this area that looks like this. If the Commission adopts that kind of regulation, the problem is solved. If the Commission doesn't adopt that kind of regulation and the Commissioner feels that the lack of that kind of regulation or the variation that the Commission adopts is going to present a problem in the future, he can immediately begin the process

to rescind that regulation. He doesn't have to wait until the harm occurs. If he finds that the regulation or the absence of a regulation presents the reasonable likelihood of harm, he can act.

SENATOR COLLINS: Are there any other questions from the Committee? Thank you have much, Mr. Patterson. I would ask the Committee to consider including in the official record of this hearing, two written items, one is the memorandum from Attorney General, Mr. Richard S. Cohen, dated March 28, 1980, addressed to Joint Select Committee on Indians Land Claims, Re: Proposed Indian Land Claims Settlement, which has been handed out just a few minutes ago to each of us here at the Committee table. This memorandum responds to a letter addressed to the Attorney General by this Committee on March the 26th. Is it the pleasure of the Committee to include this memorandum as a part of this record?

SENATOR CONLEY: So moved.

SENATOR COLLINS: It is so voted. The second matter relates to a statement by former Governor James B. Longley. The Chairman of the Committee received a telephone call last evening from former Governor Longley in which he said he was uncertain whether or not he would be here today. This forenoon there was delivered to me this statement. There has not been an opportunity to make copies of it as yet. The date of the statement is March 23, 1980. I read it quickly and I perceive that it is substantially what has already appeared in the news media within the past week. I assured Governor Longley that if he did not attend that any statement that he wished to say would be brought to the attention of the Committee. Is it the wish of the Committee to include this statement in the record today? (No objection from the Committee) Without objection, it is so ordered. Are

there any other materials the Committee wishes to make a part of the official record? Would Mr. Tureen come down to the podium, please, we have a couple questions for you. Mr. Pearson.

REPRESENTATIVE PEARSON: Mr. Chairman, will the transcript of this hearing be introduced as part of the official record of the Senate and the House?

SENATOR COLLINS: We have not an answer to that for sure as yet. Would you wait just a minute while I confer with my co-chairman? There has been high-level discussion about that question and I am informed by my co-chairman that the Speaker of the House and the President of the Senate are contemplating that this transcript might be made a part of the official Legislative Record as an Appendix to that Record. I expect that the final decision on that might be available when we reconvene next week. I believe some Members of the Committee now have some questions for Mr. Tureen.

REPRESENTATIVE POST: Mr. Tureen, we received from you earlier a list of the townships or acreage that you--were included as options. Is it your understanding that--or is it with your consent that certain lots within that acreage are now being offered to camp owners for sale before transfers are made to either of the Indian Tribes or Nations?

MR. TUREEN: Well, it's our understanding that the companies have already offered some of those parcels and that they had done that previously. To the extent that they've done that, that is probably a legal obligation that we can't interfere with.

REPRESENTATIVE POST: What about offerings which have not been made yet because we're not sure at this point how many of the companies

are making those offerings. What about offerings which have not yet been made but companies may wish to make them?

MR. TUREEN: I'm not aware of the dimension of the problem. I think we're dealing with comparatively few camps other than the Dead River Property where we are aware of what they are doing. What you need to understand is that the--some of the lands that are included are lands which the Tribe has merely a right of first refusal and we at this point are not aware of--they are simply areas that might be considered in the future. We're not aware of the particular composition of the camps on those lakes right now.

REPRESENTATIVE POST: So you don't anticipate any difficulties with leasees who wish, in fact, to purchase their property before transfer is made. You don't anticipate any problems with that or any objections to that?

MR. TUREEN: From the information that I have, no, I don't.

REPRESENTATIVE POST: Is it your understanding that in instances in the Maine Statutes where there are differences made between existing municipalities and new municipalities that the Indian Territories would come under the definition of a new municipality?

MR. TUREEN: That is my understanding.

REPRESENTATIVE POST: Is it your understanding that for the purposes of payment in lieu of taxes that the State Tax Assessor would be setting the valuation of real and personal property when that was used as a basis for payment in lieu of those taxes?

MR. TUREEN: That is also my understanding.

REPRESENTATIVE POST: I think that's all I have.

MR. TUREEN: That's in the absence of an assessment by the Tribes. There's a mechanism in the Legislation, in the absence of an assessment by the Tribes under certain circumstances for using an average valuation from across the State.

REPRESENTATIVE POST: I believe that any specific discussion on assessments by the Tribe were--I don't know if I can find them here--were not in the taxation section but were in the section on receiving funds from the State itself.

MR. TUREEN: Absent that, the assessment would--your initial question, the answer to that is absent that in which regard to assessments that it is our understanding that the State Tax Assessor would be the one who would be setting those valuations.

REPRESENTATIVE POST: So for instance, for the assessment of county taxes then the State Tax Assessor would set the valuation on the Indian Territory in each respective county which would go on the basis of determining what the Indian Territory was liable for in payments in lieu of taxes?

MR. TUREEN: That's correct.

REPRESENTATIVE POST: Under the property tax section, there was an exemption for any real or personal property within Indian Territory used by either Tribe or Nation for governmental purposes. Is that supposed to mean used exclusively for governmental purposes. I mean, if it was an individually owned truck or building, just because it might be used periodically for governmental purposes, wouldn't give it a total exemption.

MR. TUREEN: That was an item that was discussed in the negotiations, the language that you see before you is the product of negotiations. We were

not going to--the Negotiating Committee was unwilling to get into a position where if some item that was used 99 percent for governmental purposes happened to be used one percent for non-governmental purposes, they would lose that exemption.

REPRESENTATIVE POST: Well, I'm concerned about just the opposite happening, that something that was used 99 percent for private purposes, just because it was used 1 percent of governmental purposes, wouldn't be liable for taxation or payment in lieu of taxes.

MR. TUREEN: You're talking about a very remote possibility when you're talking about payments in lieu of taxes in any event and that's the way the legislation was written, what you identified, if you feel that is a problem, is a problem. A determination would have to be made on that particular question on the particular facts of the particular situation.

REPRESENTATIVE POST: It's your understanding then that under this legislation that any real or personal property that may be privately owned would--if it were used at all for governmental purposes, would be totally exempt.

MR. TUREEN: No. I think there's obviously a standard of reasonableness. You postulate the extreme situation and I suppose there will be some minimal tests of reasonableness applied to that.

REPRESENTATIVE POST: Is there any problem in doing what we often do in many of our taxation issues of inserting the word primarily?

MR. TUREEN: Well, that's the problem with any amendment to the Legislation. What you have before you is something that was discussed in negotiations. I think we would view that as something more than a technical change.

REPRESENTATIVE POST: And is your understanding that the definition of governmental purposes--the general standard definition as far as what other municipalities are able to do as far as governmental purposes are concerned?

MR. TUREEN: Yes.

REPRESENTATIVE POST: So it would not include any business activities.

MR. TUREEN: That's correct.

REPRESENTATIVE POST: And it would just--as far as governmental purposes for all tax exemptions are concerned, either in the territory or the organized areas are what's generally accepted governmental purposes for municipalities.

MR. TUREEN: Yes, the Legislation deals separately with business activities carried on by the Tribes.

REPRESENTATIVE POST: But governmental purposes is the generally understood definition of governmental purposes as far as municipalities is concerned.

MR. TUREEN: That's correct. That's the way the Legislation is set up.

REPRESENTATIVE POST: Okay.

SENATOR COLLINS: Mr. Tureen, two questions--these are not my questions, they have been handed to me by other Members of the Legislature. One, are you satisfied that proper procedures were followed to bring this Bill before this Committee?

MR. TUREEN: Well, let me address that. The--one aspect of Tribal Sovereignty is Tribal decision making on questions of this nature and it's

a difficult matter and, I too, have listened to everything that's been said today. Neither the Passamaquoddy Tribe nor the Penobscot Nation operates under a constitution. The Tribes have procedures of their own for making decisions on matters of importance to the Tribe and in this instance, I'm satisfied that as a legal matter, the Tribes met their legal requirements in terms of making their decisions and that this matter is properly before this Committee and the Legislature. An injunction was sought in the Tribal Court and was denied. An injunction was sought on the grounds that this was--that the procedure within the Tribe was illegal. The Tribes moved on this as quickly as they felt they could. The Tribal Council, and while I recognize that opinions differ on this, it's my personal feeling that reasonable and honest people could have concluded, and I'm talking about people on the Tribal Council, could have concluded that it was in the vital interests of the Penobscot Nation to move as quickly as possible with regard to this question. We negotiated--the Negotiating Committee negotiated this agreement with the Attorney General's Office. Toward the end of those negotiations, all parties to the negotiations recognized that it would be helpful, certainly, if this Bill could be dealt with by the Legislature of the State of Maine at this session so that it could then get started in Congress and it was everyone's feeling that it would first have to be dealt with by the Tribes. Then the Tribal Councils set these matters for decision in the shortest period of time that they felt they could because they felt it was important. Yes, it was a short period of time. All of us would have liked more time and I'm speaking now for myself and the other members of the Negotiating Committee with whom I've worked with on this but the Negotiating Committee and the Tribes thought that it was in their vital interest to move as they did and it's their

expectation that the State will now deal with it as expeditiously as possible. But insofar as the precise question is concerned, yes I feel that it was legally done.

SENATOR COLLINS: Thank you, Mr. Tureen. The last question is one in the memorandum of former Governor Longley and in pursuing his memorandum, I believe this is perhaps the only thing that hasn't been touched in some other way today. You may or may not be able to respond to it. The question is, why wouldn't it be appropriate for the Legislature to ask the Indian Tribes to submit this claim to the United States Court of Claims without any economic sanctions during the trial if the Indians refuse whatever Congress recommends?

MR. TUREEN: Well, this is a--we're going back to an issue and a discussion that was carried on at great length a couple of years ago and there are two basic answers and as I talk about those two, I may think of others. The basic answers are, first of all, that my clients are primarily concerned with the return of land and their claims for return of land primarily. And in the United States Court of Claims, the United States Court of Claims has no power to return land. Now, that's the first answer but I think the real answer is a much more--goes to a much more important aspect of that question and that is that the Congress of the United States, and I think all of us have to realize this as a practical reality, is not going to open itself for liability in this case. The United States Government has said that it feels we have a strong case. The State of Maine has said that there's substantial chance, 40 percent risk, chance of our winning. All parties have acknowledged that the exposure, the value of the case is potentially into billions of dollars. The United States Government is not

going to open itself to that kind of liability when the chances of our winning are assessed in the way that they are. What we would be facing as a practical matter is precisely the plan that Governor Longley, himself, was the architect of several years ago when legislation was introduced in Congress that would, yes, allow the Indians an opportunity to sue in the Court of Claims but which would put a ceiling on what they could recover which would expropriate the vast bulk of their claim with no compensation whatsoever and allow them to sue for that which the United States was willing to permit them to recover. That is fundamentally unfair. That is a fundamental violation of legal rights, of human rights, it certainly would not be tolerated by my clients nor by the international community and it is an impossibility and so when we talk about a suit in a Court of Claims, we're talking about something which could never happen in a fair way and we're talking about proposing a truly shameful act. My clients have indicated their willingness throughout this process to negotiate an honorable settlement. They have reached a negotiated agreement with the Attorney General of the State of Maine. Not everyone is happy with that but at least it's a negotiated agreement.

SENATOR COLLINS: Thank you. Are there any other questions for Mr. Tureen? Thank you, Mr. Tureen.

MR. TUREEN: Thank you very much.

SENATOR COLLINS: Is there anyone else that the Committee wishes to hear from before we conclude the hearing? Mr. Perkins, could you come to the podium.

REPRESENTATIVE POST: Can you give us an estimate of the amount of acreage that's involved with leased camps in the areas that have been

defined in our LD?

MR. PERKINS: I cannot in terms of acreage. I believe on the Dead River Land, there is something above a hundred leases. On the Great Northern Lands, I believe there are something under 20. I was asked earlier by Representative Pearson to address the question of the Diamond Land and I've done that. The Diamond Lands proposed for option involve two parcels. One in the towns that lie across the border, involving the Towns of Argyle and Alton. There are no leases there. In the Town of Lake View, there is one lease and that owner has been informed that he may either purchase or have it accepted. Georgia Pacific has no leases outstanding. I will attempt to take steps just as quickly as possible to determine what leases there are on the other lands and what the company policy is to them. There have been several camp owners here at this hearing today who have inquired of me and I have referred them to the respective company manager so that they might determine whether they were within an area and get prompt information. If there is anybody else here with that problem and if they haven't had a communication yet from their respective landowner, if they don't want to wait for the communications which I think would be forthcoming shortly, they can communicate with that lease manager or whoever they deal with at the company and get the answer. It's unfortunate that between the circumstances of the matter breaking in the press before people anticipated and the manner and the fact that there's been a continued effort understandably by the Tribes to improve the location and the contiguity of their lands, that the inclusion of lands has been sort of bouncing around. But that process of, number one, completing your information in that regard and number two, there being appropriate communication is going forward and

I will report on it to you just as quickly as I can.

REPRESENTATIVE POST: Thank you.

SENATOR COLLINS: Any other questions for Mr. Pearson—excuse me, Mr. Perkins? The Committee has scheduled a work session for Monday and at that time we will be deliberating on all that we've heard today. The Committee Members are advised that if they have any specific issues on which they would like to meet with Commissioners or other members of the State Government on Monday, they will make it known to David Flanagan of the Governor's Staff. He will try to arrange those matters.

MR. PHILLIPS: Excuse me, Senator.

SENATOR COLLINS: Sir.

MR. PHILLIPS: I submitted two questions to the Board and I would like to have those two questions asked to Mr. Tureen and I'd like to have his answer please. I'd like to have that answer on record. Two questions on a yellow piece of paper, torn in half, from Neil Phillips. It's on a legal sheet of paper, torn in half. Would you allow me to ask him, please, if you can't find them? I submitted them right after lunch.

SENATOR COLLINS: Could you restate the questions to us?

MR. PHILLIPS: Alright, I direct this question to Mr. Tureen. In the lawsuit, Gary Akins vs. the Penobscot Governor and Council, is it not true that you stated that the vote on March 15th would only be an advisory vote?

SENATOR COLLINS: Would you state the other question too, please, and then we'll have him answer both.

MR. PHILLIPS: And the second question is that if this is an advisory vote, will this question be brought back to the people so that

people can either affirm it or throw the thing out?

SENATOR COLLINS: Mr. Tureen.

MR. TUREEN: The answer to the question is that I did state that the vote as a technical matter was an advisory vote. There is no specific procedure layed out in the Penobscot Nation for dealing with this kind of issue. The Tribal Council speaks for the Tribe and it decided that before it would move forward with this Settlement Proposal, that it wanted to allow the people of the Tribe to speak in a referendum, which it did. It was not legally advised to do that. I will say at the last general meeting that was held in the Tribe to consider a settlement question, that was a year ago when the Tribes voted on the amount of land that would be acceptable in the Settlement and the amount of money that would be acceptable. That was-- the decision at a general meeting was made to conduct that vote by referendum. It's not for me to answer the second question. That's up to the Governor and Council--to the Penobscot Nation itself.

SENATOR COLLINS: Thank you, Mr. Tureen. I believe this concludes our hearing. I know that our stenographer is about out of material and energy. I thank all of you for coming today, for your patience and your contributions and the Committee will be meeting on Monday to give this matter further work. This hearing is now adjourned!

* * * * *

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STATEMENT BY: Former Governor James B. Longley

IN RE: His intention to remain as neutral as possible on the
Indian Land Claim Question and yet alert the news
media to unanswered questions that need to be answered.

DATE: March 23, 1980

Over the past few days, I have been asked by representatives of the news media, as well as concerned citizens, what posture, if any, I have taken with respect to the most recent proposal regarding the Indian Land Claims against the innocent citizens of Maine.

Candidly, in fairness to the present Governor and Attorney General, I went to the maximum extent possible to remain neutral on this question; yet, I am deeply concerned. I am concerned most of all for the people of Maine and their Legislators to the extent I detect pressure being exerted on them to rush this proposed legislation. I feel that the Legislature should strive to avoid pressure to resolve this question in what might well be too short a time. Furthermore, I would hope the Legislature would not simply pass the buck to Maine's Congressional Delegation or the Congress as a whole as it relates to this question.

The Indian Law Suit against the rest of the citizens of Maine was one of the most difficult issues I faced during my time as Governor. I spent countless hours working with the Maine tribes, Attorney General Brennan and other state lawmakers and members of the Maine Congressional Delegation

and the White House, in an attempt to resolve this dispute in the fairest and most equitable manner possible for the Indian as well as non-Indian citizens of the State of Maine. The issues have not grown simpler, and Governor Brennan and Attorney General Cohen are to be commended for their continued hard work and dedication toward fairness for all as demonstrated by their efforts since I left office.

Just under two weeks ago, the details of an out-of-court settlement of this dispute were released to the news media. Soon, a Joint Select Committee of the Legislature will conduct a hearing on the proposed settlement, and a vote to enact the proposal may soon follow. We would do well to remember that we are dealing with a dispute which has its legal origins in actions taken over two hundred years ago. I hope that after this extended period, the Legislature will not act hastily to approve that which they may not fully understand. There are a number of issues here that must be carefully weighed to insure that we do not plant seeds today, that in future decades or years, even centuries, will return again to haunt us.

I am not speaking in opposition to the latest agreement. I simply want to urge caution by the Legislature and suggest that they proceed carefully with all the time possible to fully review and understand the proposed settlement. Specifically, they must act with full knowledge and understanding of the course of conduct they are urging on the United States Congress. They should not be rushed. Several questions need to be examined thoroughly, including:

(1) Why would \$81 million dollars plus special tax breaks be negotiated by pulp and paper companies and private landowners, with Indian Legal Counsel, without any state involvement?

(2) Why has the price of land been substantially increased from the time I was Governor, when private landowners quoted prices ranging from \$100 to \$112 per acre, vis a vis the present price quoted under this settlement agreement of \$181 per acre. This is a difference of over \$20 million dollars. Who is to receive this money?

(3) To the extent both federal and state taxes are involved, why shouldn't citizens and the news media of Maine have an actual list of:

(a) Land to be purchased and where and from whom?

(b) The price to be paid per acre to individual landowners?

I would submit that the Legislature and the news media and the people of Maine should have these answers before the public hearing.

(4) Why wouldn't it be appropriate for the Legislature to ask the Indian Tribes to submit this claim to the United States Court of Claims without any economic sanctions during the trial, if the Indians refuse whatever Congress recommends? During my term as Governor, the citizens of Maine were subjected to tremendous economic pressure and leverage, and I feel it only fair that the Indian Tribes try to avoid this approach in the future, based on the willingness of the Legislature to submit any bill to the Congress.

(5) Let us not believe that Maine taxpayers will not have

to pay for the \$81 million dollars unless they are not paying Federal Taxes. Let us not say there is not going to be additional tax or cost on the taxpayers of Maine. There will be. Therefore, is it fair to say there is not going to be additional tax imposed on the taxpayers of Maine?

(6) I feel that unless each Maine lawmaker thinks \$81 million dollars is fair, they should search their conscience as to whether it is fair to pass the buck to the Maine Delegation and the United States Congress.

(7) Should the federal government or the Indian Tribes reimburse the State of Maine from any settlement they might receive for the millions of dollars the taxpayers of Maine have paid our Indian citizens due to the fact the federal government in the past refused to recognize our Maine Indians as eligible for federal assistance while still pouring millions of dollars into the western Indian reservations.

Finally, during the time I served as Governor, I was criticized by Indian Legal Counsel for the nation within a nation objective I felt Indian Legal Counsel was seeking. The Indian Legal Counsel consistently criticized my challenge and consistently denied that the nation within a nation concept was one of their objectives. I am now advised, and my study of the proposed legislation to the Maine Legislature confirms, that there is indeed a nation within a nation concept contained within the proposed bill. However, I have also been further advised that the present bill limits the separate nation status that recent court decisions have rendered. While I

disagree with these recent court decisions, I would simply challenge the Legislature to make certain they are not extending separate and preferential laws for Indian Citizens as contrasted with our non-Indian Citizens. If this is so, the State of Maine has indeed rendered favored treatment to one class of citizens, or in effect, endorsed the concept of a second class of citizens vis a vis a first or preferential class of citizens at the expense of the rest of the citizens of Maine.

Once again, I commend the Governor and the Attorney General and I firmly believe each of them is trying to do what is right and fair for all people of Maine. However, I urge each and every legislator to examine this entire proposal very carefully and avoid being pressured or rushed on hasty decisions and matters as important as this for the people of Maine and the entire United States from the standpoint of the precedent that might be set. During the time I was in office, I was advised that there were approximately ninety-five Indian cases pending against the citizens here in the United States. At the time I left office, I was advised that there were 1,500 cases pending against these same citizens of the United States. I am now advised by Senator William Cohen, the Senior Minority Member of the Indian Affairs Committee of the United States Congress, that there are 9,500 cases pending concerning water rights, hunting and fishing rights, land titles, and yes, questions involving nation within a nation, separate rules and laws and ordinances, and I am simply urging the Legislature to weigh not only what is best for Maine but also what our

responsibility is to the entire United States from the standpoint of the precedent we might set. Based on my experience with the Maine Legislature, they will try to do what is right for our Indian citizens as well as our non-Indian citizens. I wish them well in this regard.